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THE OIL AND GAS CONSERVATION STATUTES

[ANNOTATED]

COMPILED BY
NORTHCUTT ELY
Assistant to the Secretary of the Interior
Chairman, Technical and Advisory Committee to
the Federal Oil Conservation Board

FEDERAL
OIL CONSERVATION BOARD
WASHINGTON, D. C.
1933

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FOREWORD

THERE is a growing recognition that the police power of the State is the readiest safeguard for the protection of our irreplaceable oil and gas reserves against waste. The statutes and orders of the oil-producing States show a gradual assumption of responsibility in three phases—the preservation of the reservoir energy of the single pool, the allocation of production among pools in order to promote maximum recovery of their oil, and, more recently, the voluntary allocation of production among the States for the same end. Increasing attention is being given to the adaptation of these laws to accord with improved engineering data. In the present compilation Mr. Ely has brought together for the Federal Oil Conservation Board these State and Federal statutes and the decisions which have construed them.

RAY LYMAN WILBUR,
Chairman.

JANUARY 1, 1933.

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UNITED STATES

THE MINERAL LEASING ACT

FEBRUARY 25, 1920; 41 STAT. 437

AS AMENDED

[*Lands subject to disposition; right to extract helium reserved; persons not entitled to benefits.*]

SECTION 1. That deposits of coal, phosphate, sodium, oil, oil shale, or gas, and lands containing such deposits owned by the United States, including those in national forests, but excluding lands acquired under the act known as the Appalachian Forest act, approved March 1, 1911 (Thirty-sixth Statutes, page 961), and those in national parks, and in lands withdrawn or reserved for military or naval uses or purposes, except as hereinafter provided, shall be subject to disposition in the form and manner provided by this act to citizens of the United States, or to any association of such persons, or to any corporation organized under the laws of the United States, or of any State or Territory thereof, and in the case of coal, oil, oil shale, or gas, to municipalities: *Provided*, That the United States reserves the right to extract helium from all gas produced from lands permitted, leased, or otherwise granted under the provisions of this act, under such rules and regulations as shall be prescribed by the Secretary of the Interior: *Provided further*, That in the extraction of helium from gas produced from such lands, it shall be so extracted as to cause no substantial delay in the delivery of gas produced from the well to the purchaser thereof: *And provided further*, That citizens of another country, the laws, customs, or regulations of which deny similar or like privileges to citizens or corporations of this country, shall not by stock ownership, stock holding, or stock control own any interest in any lease acquired under the provisions of this act. (U. S. Code, Title 30, sec. 181.)

Cited in *United States* v. *Wilbur*, 283 U. S. 414, 51 Sup. Ct. 502, 75 L. Ed. 1148 (1931), which sustained the Secretary's authority to refuse to accept applications for prospecting permits.

Cited in *Wilbur* v. *United States*, 46 Fed. (2d) 217, which sustained the Secretary's authority to refuse to receive applications for prospecting permits. Affirmed in *United States* v. *Wilbur*, 283 U. S. 414, 51 Sup. Ct. 502, 75 L. Ed. 1148 (1931).

Cited in *West* v. *United States, ex rel. Alling*, 30 Fed. (2d) 739 (App. D. C., 1929), which held that the Secretary, in the absence of regulations, could not refuse a prospecting permit to an applicant solely on the ground that she was a minor. But see *United States* v. *Wilbur*, supra.

SECTIONS 2 to 8, inclusive, omitted; relate to coal.

Cited in *United States* v. *Wilbur*, 283 U. S. 414, 51 Sup. Ct. 502, 75 L. Ed. 1148 (1931), which sustained the Secretary's authority to refuse to accept applications for prospecting permits.

SECTIONS 9 to 12, inclusive, omitted; relate to phosphates.

Cited in *United States* v. *Wilbur*, 283 U. S. 414, 51 Sup. St. 502, 75 L. Ed. 1148 (1931), which sustained the Secretary's authority to refuse to accept applications for prospecting permits.

[*Prospecting permits; term and conditions; extension; location of lands; marking land; notice of application for permit; permits in Alaska.*]

SEC. 13. That the Secretary of the Interior is hereby authorized, under such necessary and proper rules and regulations as he may prescribe, to grant to any applicant qualified under this act a prospecting permit, which shall give the exclusive right, for a period not exceeding two years, to prospect for oil or gas upon not to exceed two thousand five hundred and sixty acres of land wherein such deposits belong to the United States and are not within any known geological structure of a producing oil or gas field upon condition that the permittee shall begin drilling operations within six months from the date of the permit, and shall, within one year from and after the date of permit, drill one or more wells for oil or gas to a depth of not less than five hundred feet each, unless valuable deposits of oil or gas shall be sooner discovered, and shall, within two years from date of the permit, drill for oil or gas to an aggregate depth of not less than two thousand feet unless valuable deposits of oil or gas shall be sooner discovered. The Secretary of the Interior may, if he shall find that the permittee has been unable with the exercise of diligence to test the land in the time granted by the permit, extend any such permit for such time, not exceeding two years, and upon such conditions as he shall prescribe. Whether the lands sought in any such application and permit are surveyed or unsurveyed the applicant shall, prior to filing his application for permit, locate such lands in a reasonably compact form and according to the legal subdivisions of the public land surveys if the land be surveyed; and in an approximately square or rectangular tract if the land be an unsurveyed tract, the length of which shall not exceed two and one-half times its width, and if he shall cause to be erected upon the land for which a permit is sought a monument not less than four feet high, at some conspicuous place thereon, and shall post a notice in writing on or near said monument, stating that an application for permit will be made within thirty days after date of posting said notice, the name of the applicant, the date of the notice, and such a general description of the land to be covered by such permit by reference to

courses and distances from such monument and such other natural objects and permanent monuments as will reasonably identify the land, stating the amount thereof in acres, he shall during the period of thirty days following such marking and posting, be entitled to a preference right over others to a permit for the land so identified. The applicant shall, within ninety days after receiving a permit, mark each of the corners of the tract described in the permit upon the ground with substantial monuments, so that the boundaries can be readily traced on the ground, and shall post in a conspicuous place upon the lands a notice that such permit has been granted and a description of the lands covered thereby: *Provided*, That in the Territory of Alaska prospecting permits not more than five in number may be granted to any qualified applicant for periods not exceeding four years, actual drilling operations shall begin within two years from date of permit, and oil and gas wells shall be drilled to a depth of not less than five hundred feet, unless valuable deposits of oil or gas shall be sooner discovered, within three years from date of the permit and to an aggregate depth of not less than two thousand feet unless valuable deposits of oil or gas shall be sooner discovered, within four years from date of permit: *Provided further*, That in said Territory the applicant shall have a preference right over others to a permit for land identified by temporary monuments and notice posted on or near the same for six months following such marking and posting, and upon receiving a permit he shall mark the corners of the tract described in the permit upon the ground with substantial monuments within one year after receiving such permit. (U. S. Code, Title 30, sec. 221.)

NOTE.—For authorization of further extensions of permits, see 42 Stat. 356, Code, Title 30, sec. 222; 44 Stat. 236, Code, Title 30, sec. 222 a, b; 45 Stat. 252, Code, Title 30, sec. 222 c, d; 46 Stat. 58, Code, Title 30, sec. 222 e, f; 47 Stat. 445, Code, Title 30, sec. 222 g, h.

Cited in *Wilbur* v. *United States*, 46 Fed. (2d) 217, which sustained the Secretary's authority to refuse to receive applications for prospecting permits. Affirmed in *United States* v. *Wilbur*, 283 U. S. 414, 51 Sup. Ct. 502, 75 L. Ed. 1148 (1931).

Held, That the Secretary could not be required by mandamus to issue prospecting permits which he had declined to issue on the ground of necessity of conservation. *United States* v. *Wilbur*, 283 U. S. 414, 51 Sup. Ct. 502, 75 L. Ed. 1148 (1931), affg. 46 F. (2d) 217, 224.

West v. *Alling*, 30 F. (2d) 739 (C. A. D. C. 1929), held that the Secretary had no authority to reject an application for a prospecting permit on the sole ground that the applicant was a minor, under regulations which made no distinctions against minors. But see *United States* v. *Wilbur*, supra.

[*Leases; amount and survey of land; term of lease; royalties and annual rental.*]

SEC. 14. That upon establishing to the satisfaction of the Secretary of the Interior that valuable deposits of oil or gas have been

discovered within the limits of the land embraced in any permit, the permittee shall be entitled to a lease for one-fourth of the land embraced in the prospecting permit: *Provided*, That the permittee shall be granted a lease for as much as one hundred and sixty acres of said lands, if there be that number of acres within the permit. The area to be selected by the permittee shall be in compact form and, if surveyed, to be described by the legal subdivisions of the public-land surveys, if unsurveyed, to be surveyed by the Government at the expense of the applicant for lease in accordance with rules and regulations to be prescribed by the Secretary of the Interior, and the lands leased shall be conformed to and taken in accordance with the legal subdivisions of such surveys; deposits made to cover expense of surveys shall be deemed appropriated for that purpose, and any excess deposits may be repaid to the person or persons making such deposit or their legal representatives. Such leases shall be for a term of twenty years upon a royalty of 5 per centum in amount or value of the production and the annual payment in advance of a rental of $1 per acre, the rental paid for any one year to be credited against the royalties as they accrue for that year, with the right of renewal as prescribed in section 17 hereof. The permittee shall also be entitled to a preference right to a lease for the remainder of the land in his prospecting permit at a royalty of not less than 12½ per centum in amount or value of the production, and under such other conditions as are fixed for oil or gas leases in this act, the royalty to be determined by competitive bidding or fixed by such other method as the Secretary may by regulations prescribe: *Provided*, That the Secretary shall have the right to reject any or all bids. (U. S. Code, Title 30, sec. 223.)

NOTE.—Cited in *Wilbur* v. *United States*, 46 Fed. (2d) 217, which sustained the Secretary's authority to refuse to receive applications for prospecting permits. Affirmed in *United States* v. *Wilbur*, 283 U. S. 414, 51 Sup. Ct. 502, 75 L. Ed. 1148 (1931).

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Cited in *West* v. *U. S. ex rel. Alling*, 30 Fed. (2d) 739 (Ct. App. Dec., 1929), which held that the Secretary, in the absence of regulations, could not refuse a prospecting permit to an applicant solely on the ground that she was a minor. But see *United States* v. *Wilbur*, supra.

[*Payments for oil or gas taken prior to application for lease.*]

SEC. 15. That until the permittee shall apply for lease to the one quarter of the permit area heretofore provided for he shall pay to the United States 20 per centum of the gross value of all oil or gas secured by him from the lands embraced within his permit and sold

or otherwise disposed of or held by him for sale or other disposition. (U. S. Code, Title 30, sec. 224.)

[*Conditions of permit or lease; forfeiture for violations of.*]

SEC. 16. That all permits and leases of lands containing oil or gas, made or issued under the provisions of this Act, shall be subject to the condition that no wells shall be drilled within two hundred feet of any of the outer boundaries of the lands so permitted or leased, unless the adjoining lands have been patented or the title thereto otherwise vested in private owners, and to the further condition that the permittee or lessee will, in conducting his explorations and mining operations, use all reasonable precautions to prevent waste of oil or gas developed in the land, or the entrance of water through wells drilled by him to the oil sands or oil-bearing strata, to the destruction or injury of the oil deposits. Violations of the provisions of this section shall constitute grounds for the forfeiture of the permit or lease, to be enforced through appropriate proceedings in courts of competent jurisdiction. (U. S. Code, Title 30, sec. 225.)

[*Lease of unappropriated deposits of oil or gas in producing oil or gas field; royalties and annual rentals; unit operation.*] (AS AMENDED BY ACT OF MARCH 4, 1931; U. S. CODE, TITLE 30, SEC. 226.)

SEC. 17. That all unappropriated deposits of oil or gas situated within the known geologic structure of a producing oil or gas field and the unentered lands containing the same, not subject to preferential lease, may be leased by the Secretary of the Interior to the highest responsible bidder by competitive bidding under general regulations to qualified applicants in units reasonably compact of not exceeding six hundred and forty acres, such leases to be conditioned upon the payment by the lessee of such bonus as may be accepted and of such royalty as may be fixed in the lease, which shall not be less than 12½ per centum in amount or value of the production, and the payment in advance of a rental of not less than $1 per acre per annum thereafter during the continuance of the lease, the rental paid for any one year to be credited against the royalties as they accrue for that year.

Leases shall be for a period of twenty years with the preferential right in the lessee to renew the same for successive periods of ten years upon such reasonable terms and conditions as may be prescribed by the Secretary of the department having jurisdiction thereof, unless otherwise provided by law at the time of the expiration of such periods: *Provided*, That any lease heretofore or here-

after issued under this act that has become the subject of a cooperative or unit plan of development or operation of a single oil or gas pool, or area, or other plan for the conservation of the oil and gas of a single pool or area, which plan has the approval of the Secretary of the department or departments having jurisdiction over the Government lands included in said plan as necessary or convenient in the public interest, shall continue in force beyond said period of twenty years until the termination of such plan:[1] *And provided further*, That said Secretary or Secretaries shall report all leases so continued to Congress at the beginning of its next regular session after the date of such continuance.

Any cooperative or unit plan of development or operation, which includes land owned by the United States, shall contain a provision whereby authority, limited as therein provided, is vested in the Secretary of the department or departments having jurisdiction over such land to alter or modify from time to time in his discretion the quantity and rate of production under said plan. The Secretary of the Interior is authorized whenever he shall deem such action necessary or in the public interest, with the consent of lessee, by order to suspend or modify the drilling or producing requirements of any oil and gas lease heretofore or hereafter issued, and no lease shall be deemed to expire by reason of the suspension of production pursuant to any such order. Whenever the average daily production of any oil well shall not exceed ten barrels per day the Secretary of the Interior is authorized to reduce the royalty on future production when in his judgment the well can not be successfully operated upon the royalty fixed in the lease. The provisions of this section shall apply to all oil and gas leases made under this act.

Cited in *United States* v. *Wilbur*, 283 U. S. 414, 51 Sup. Ct. 502, 75 L. Ed. 1148 (1931), which sustained the Secretary's authority to refuse to accept applications for prospecting permits.

SEC. 18. [*Leases to persons relinquishing rights under prior claims on withdrawn lands under preexisting placer mining law; claims on naval petroleum reserves; fraud of claimant; adjustment of suits.*] Omitted; special relief section. (U. S. Code, Title 30, sec. 227.)

NOTE.—The constitutionality of the mineral leasing act was attacked in litigation between a mineral locator and a section 18 lessee, in *Hodgson* v. *Midwest Oil Company*. The United States District Court (297 Fed. 273) sustained a demurrer to the petition in which this issue was raised and held it unnecessary to pass on the act's constitutionality. On writ of error to the United States Supreme Court, the case was transferred to the United States Circuit Court of Appeals for the Eighth District. 269 U. S. 534, 46 Sup. Ct. 100, 70 L. Ed. 399. The Circuit Court of Appeals sustained the demurrer for failure to state a cause of action without passing on the constitutionality of the act. 17 Fed. (2d) 71.

[1] See regulations of April 4, 1932, re unit operation.

SEC. 18A. [*Compromise of claims relating to withdrawn land.*] Omitted; special relief section.

SEC. 19. [*Prospecting permits and leases to persons of lands not withdrawn; terms and conditions of; fraud of claimants.*] Omitted; special relief section for bona fide claimants on October 1, 1919, who had failed to make a discovery prior to the leasing act. (U. S. Code, Title 30, sec. 228.)

SEC. 20. [*Preference right to permits or leases of claimants of lands bona fide entered as agricultural land; terms and conditions of.*] Omitted. (U. S. Code, Title 30, sec. 229.)

SEC. 21. [*Oil shale.*] Omitted.

SEC. 22. [*Alaska oil proviso.*] Omitted.

Cited in *United States* v. *Wilbur*, 283 U. S. 414, 51 Sup. Ct. 502, 75 L. Ed. 1148 (1931), which sustained the Secretary's authority to refuse to accept applications for prospecting permits.

SECS. 23, 24, 25. [*Sodium.*] Omitted.

Cited in *United States* v. *Wilbur*, 283 U. S. 414, 51 Sup. Ct. 502, 75 L. Ed. 1148 (1931), which sustained the Secretary's authority to refuse to accept applications for prospecting permits.

[*Cancellation of prospecting permits.*]

SEC. 26. That the Secretary of the Interior shall reserve and may exercise the authority to cancel any prospecting permit upon failure by the permittee to exercise due diligence in the prosecution of the prospecting work in accordance with the terms and conditions stated in the permit, and shall insert in every such permit issued under the provisions of this act appropriate provisions for its cancellation by him. (U. S. Code, Title 30, sec. 183.)

[*Limitation on number of leases to one person; unit operation; combinations or unlawful trusts.*] (AS AMENDED BY ACT OF MARCH 4, 1931; U. S. CODE, TITLE 30, SEC. 184.)

SEC. 27. That no person, association, or corporation, except as herein provided, shall take or hold coal, phosphate, or sodium leases or permits during the life of such leases or permits in any one State exceeding in aggregate acreage two thousand five hundred and sixty acres for each of said minerals; no person, association, or corporation shall take or hold at one time oil or gas leases or permits exceed-

ing in the aggregate seven thousand six hundred and eighty acres granted hereunder in any one State, and not more than two thousand five hundred and sixty acres within the geologic structure of the same producing oil or gas field; and no person, association, or corporation shall take or hold at one time any interest or interests as a member of an association or associations or as a stockholder of a corporation or corporations holding a lease or leases, permit or permits, under the provisions hereof, which, together with the area embraced in any direct holding of a lease or leases, permit or permits, under this Act, or which, together with any other interest or interests as a member of an association or associations or as a stockholder of a corporation or corporations holding a lease or leases, permit or permits, under the provisions hereof for any kind of mineral leases hereunder, exceeds in the aggregate an amount equivalent to the maximum number of acres of the respective kinds of minerals allowed to any one lessee or permittee under this Act. Any interests held in violation of this Act shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States district court for the district in which the property, or some part thereof, is located, except that any ownership or interest forbidden in this Act which may be acquired by descent, will, judgment, or decree may be held for two years and not longer after its acquisition: *Provided*, That nothing herein contained shall be construed to limit sections 18, 18a, 19, and 22 or to prevent any number of lessees under the provisions of this Act from combining their several interests so far as may be necessary for the purposes of constructing and carrying on the business of a refinery, or of establishing and constructing as a common carrier a pipe line or lines of railroads to be operated and used by them jointly in the transportation of oil from their several wells, or from the wells of other lessees under this Act, or the transportation of coal or to increase the acreage which may be acquired or held under section 17 of this Act: *Provided further*, That any combination for such purpose or purposes shall be subject to the approval of the Secretary of the Interior on application to him for permission to form the same: *And provided further*, That for the purpose of more properly conserving the natural resources of any single oil or gas pool or field, permittees and lessees thereof and their representatives may unite with each other or jointly or separately with others in collectively adopting and operating under a cooperative or unit plan of development or operation of said pool or field, whenever determined and certified by the Secretary of the Interior to be necessary or advisable in the public interest, and the Secretary of the Interior is thereunto authorized in his discretion, with the consent of the

holders of leases or permits involved, to establish, alter, change, or revoke drilling, producing, and royalty requirements of such leases or permits, and to make such regulations with reference to such leases and permits with like consent on the part of the lessee or lessees and permittees in connection with the institution and operation of any such cooperative or unit plan as he may deem necessary or proper to secure the proper protection of such public interest: *And provided further*, That when any permit has been determined to be wholly or in part within the limits of a producing oil or gas field which permit has been included, with the approval of the Secretary of the Interior, in a unit operating agreement or other plan under this Act the Secretary of the Interior may issue a lease for the area of the permit so included in said plan without further proof of discovery:[2] *Provided further*, That the Secretary of the Interior is hereby authorized, on such conditions as he may prescribe, to approve operating, drilling, or development contracts made by one or more permittees or lessees in oil or gas leases or permits with one or more persons, associations, or corporations whenever in his discretion and regardless of acreage limitations, provided for in this Act, the conservation of natural products or the public convenience or necessity may require it or the interests of the United States may be best subserved thereby: *And provided further*, That, except as herein provided, if any of the lands or deposits leased under the provisions of this Act shall be subleased, trusteed, possessed, or controlled by any device permanently, temporarily, directly, indirectly, tacitly, or in any manner whatsoever so that they form a part of or are in anywise controlled by any combination in the form of an unlawful trust, with consent of lessee, or form the subject of any contract or conspiracy in restraint of trade in the mining or selling of coal, phosphate, oil, oil shale, gas, or sodium entered into by the lessee, or any agreement or understanding, written, verbal, or otherwise, to which such lessee shall be a party, of which his or its output is to be or become the subject, to control the price or prices thereof or of any holding of such lands by any individual, partnership, association, corporation, or control in excess of the amounts of lands provided in this Act, the lease thereof shall be forfeited by appropriate court proceedings: *And provided further*, That nothing in this Act shall be construed as affecting existing leases within the borders of the Naval Petroleum Reserves or agreements concerning operations thereunder or in relation to the same, but the Secretary of the Navy is hereby authorized, with the consent of the President, to enter into agreements such as those provided for herein; which agreements shall not, unless ex-

[2] See regulations of April 4, 1932, re unit operation.

pressed therein, operate to extend the term of any lease affected thereby.

[*Rights of way for pipe lines.*]

SEC. 28. That rights of way through the public lands, including the forest reserves, of the United States are hereby granted for pipe-line purposes for the transportation of oil or natural gas to any applicant possessing the qualifications provided in section 1 of this Act, to the extent of the ground occupied by the said pipe line and twenty-five feet on each side of the same under such regulations as to survey, location, application, and use as may be prescribed by the Secretary of the Interior and upon the express condition that such pipe lines shall be constructed, operated, and maintained as common carriers: *Provided*, That the Government shall in express terms reserve and shall provide in every lease of oil lands hereunder that the lessee, assignee, or beneficiary, if owner, or operator or owner of a controlling interest in any pipe line or of any company operating the same which may be operated accessible to the oil derived from lands under such lease, shall at reasonable rates and without discrimination accept and convey the oil of the Government or of any citizen or company not the owner of any pipe line, operating a lease or purchasing gas or oil under the provisions of this act: *Provided further*, That no right of way shall hereafter be granted over said lands for the transportation of oil or natural gas except under and subject to the provisions, limitations, and conditions of this section. Failure to comply with the provisions of this section or the regulations prescribed by the Secretary of the Interior shall be ground for forfeiture of the grant by the United States district court for the district in which the property, or some part thereof, is located in an appropriate proceeding. (U. S. Code, Title 30, sec. 185.)

[*Reservations of easements or rights of way for working purposes; reservation of right to sell or lease surface of lands.*]

SEC. 29. That any permit, lease, occupation, or use permitted under this Act shall reserve to the Secretary of the Interior the right to permit upon such terms as he may determine to be just, for joint or several use, such easements or rights of way, including easements in tunnels upon, through, or in the lands leased, occupied, or used as may be necessary or appropriate to the working of the same, or of other lands containing the deposits described in this Act, and the treatment and shipment of the products thereof by or under

authority of the Government, its lessees, or permittees, and for other public purposes: *Provided*, That said Secretary, in his discretion, in making any lease under this Act, may reserve to the United States the right to lease, sell, or otherwise dispose of the surface of the lands embraced within such lease under existing law or laws hereafter enacted, in so far as said surface is not necessary for use of the lessee in extracting and removing the deposits therein: *Provided further*, That if such reservation is made it shall be so determined before the offering of such lease: *And provided further*, That the said Secretary, during the life of the lease, is authorized to issue such permits for easements herein provided to be reserved. (U. S. Code, Title 30, sec. 186.)

[*Assignment or subletting of leases, relinquishment of rights under leases; conditions in leases as to operation of mines, wells, and so forth.*]

SEC. 30. That no lease issued under the authority of this act shall be assigned or sublet, except with the consent of the Secretary of the Interior. The lessee may, in the discretion of the Secretary of the Interior, be permitted at any time to make written relinquishment of all rights under such a lease, and upon acceptance thereof be thereby relieved of all future obligations under said lease, and may with like consent surrender any legal subdivision of the area included within the lease. Each lease shall contain provisions for the purpose of insuring the exercise of reasonable diligence, skill, and care in the operation of said property; a provision that such rules for the safety and welfare of the miners and for the prevention of undue waste as may be prescribed by said Secretary shall be observed, including a restriction of the workday to not exceeding eight hours in any one day for underground workers except in cases of emergency; provisions prohibiting the employment of any boy under the age of sixteen or the employment of any girl or woman, without regard to age, in any mine below the surface; provisions securing the workmen complete freedom of purchase; provision requiring the payment of wages at least twice a month in lawful money of the United States, and providing proper rules and regulations to insure the fair and just weighing or measurement of the coal mined by each miner, and such other provisions as he may deem necessary to insure the sale of the production of such leased lands to the United States and to the public at reasonable prices, for the protection of the interests of the United States, for the prevention of monopoly, and for the safeguarding of the public welfare: *Provided*, That none of such provisions shall be in conflict with the laws of the State in which the leased property is situated. (U. S. Code, Title 30, sec. 187.)

[*Forfeiture or cancellation of lease.*]

SEC. 31. That any lease issued under the provisions of this act may be forfeited and canceled by an appropriate proceeding in the United States district court for the district in which the property, or some part thereof, is located, whenever the lessee fails to comply with any of the provisions of this act, of the lease, or of the general regulations promulgated under this act and in force at the date of the lease; and the lease may provide for resort to appropriate methods for the settlement of disputes or for remedies for breach of specified conditions thereof. (U. S. Code, Title 30, sec. 188.)

See *Bell Oil & Gas Co.* v. *Wilbur*, 50 F. (2d) 1070 (1931).

[*Rules and regulations; rights of States not affected.*]

SEC. 32. That the Secretary of the Interior is authorized to prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of this act, also to fix and determine the boundary lines of any structure, or oil or gas field, for the purposes of this act: *Provided*, That nothing in this act shall be construed or held to affect the rights of the States or other local authority to exercise any rights which they may have, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of the United States. (U. S. Code, Title 30, sec. 189.)

Authority of the Secretary of the Interior to promulgate regulations requiring that no oil sales be made by a lessee, except under sales contracts approved by the Secretary and at approved prices, was sustained in *Wilbur* v. *Texas Co.*, 40 F. (2d) 787 (App. D. C. 1930); Cert. den. 282 U. S. 843, 51 Sup. Ct. 24, 75 L. Ed. 748 (1930). See also *Bell Oil & Gas Co.* v. *Wilbur*, 50 F. (2d) 1070 (1931).

Cited in *West* v. *United States ex rel. Alling*, 30 Fed. (2d) 739, D. C. App., 1929, which held that the Secretary, in the absence of regulations, could not refuse a prospecting permit to an applicant solely on the ground that she was a minor. But see *United States* v. *Wilbur*, 283 U. S. 414, 51 Sup. Ct. 502, 75 L. Ed. 1148 (1931), affg. 46 F. (2d) 217, 224.

Held, That the rules and regulations of the Secretary of the Interior "should be given the full force and effect of statutes when not inconsistent or repugnant to the law itself." *Hodgson* v. *Midwest Oil Co.*, 297 Fed. 273 (Dist. Wyo. 1924); case transferred to Circuit Court of Appeals (1925) 46 S. Ct. 100, 269 U. S. 534, 70 L. Ed. 399.

[*Oaths required, when.*]

SEC. 33. That all statements, representations, or reports required by the Secretary of the Interior under this act shall be upon oath, unless otherwise specified by him, and in such form and upon such blanks as the Secretary of the Interior may require. (U. S. Code, Title 30, sec. 190.)

[*Application of act to reserve minerals.*]

SEC. 34. Omitted.

[*Disposition of royalties to States and Reclamation fund.*]

SEC. 35. Omitted.

[*Payments of royalties in oil or gas; sale of such oil or gas.*]

SEC. 36. That all royalty accruing to the United States under any oil or gas lease or permit under this act on demand of the Secretary of the Interior shall be paid in oil or gas.

Upon granting any oil or gas lease under this act, and from time to time thereafter during said lease, the Secretary of the Interior shall, except whenever in his judgment it is desirable to retain the same for the use of the United States, offer for sale for such period as he may determine, upon notice and advertisement on sealed bids or at public auction, all royalty oil and gas accruing or reserved to the United States under such lease. Such advertisement and sale shall reserve to the Secretary of the Interior the right to reject all bids whenever within his judgment the interest of the United States demands; and in cases where no satisfactory bid is received or where the accepted bidder fails to complete the purchase, or where the Secretary of the Interior shall determine that it is unwise in the public interest to accept the offer of the highest bidder, the Secretary of the Interior, within his discretion, may readvertise such royalty for sale, or sell at private sale at not less than the market price for such period, or accept the value thereof from the lessee: *Provided, however*, That pending the making of a permanent contract for the sale of any royalty oil or gas as herein provided, the Secretary of the Interior may sell the current product at private sale, at not less than the market price: *And provided further*, That any royalty oil or gas may be sold at not less than the market price at private sale to any department or agency of the United States. (U. S. Code, Title 30, sec. 192.)

[*Specified areas in Wyoming.*]

SEC. 37. Omitted. Relates to mineral locations valid at passage of the act.

NOTE.—Construed with reference to oil shale claims in *Wilbur* v. *United States ex rel. Krushnic*, 280 U. S. 306, 50 Sup. Ct. 103, 74 L. Ed. 445 (1930). *Held*, That mineral locations of shale did not become subject to forfeiture by the United States for failure to do annual assessment work automatically, but that resumption of work continued the entryman's right. Modifying and affirming *United States ex rel. Krushnic* v. *West*, 30 Fed. (2d) 742.

In an ejectment action by a mineral locator against another locator who had obtained a lease under this act, wherein the plaintiff claimed the right to continue to maintain his location under section 37, regardless of the defend-

ant's lease, held that section 37 gave the Department of the Interior the authority to adjudicate the conflicting location claims. *Hodgson* v. *Midwest Oil Co.*, 297 Fed. 273 (Dist. Wyo. 1924).

[*Fees.*]

SEC. 38. Omitted.

ACT OF JUNE 4, 1920

41 STAT. 812

Naval petroleum reserves; Secretary of Navy to take possession of, conserve, develop, use, operate, or lease; rights of claimants; royalties.

The Secretary of the Navy is directed to take possession of all properties within the naval petroleum reserves as are or may become subject to the control and use by the United States for naval purposes, and on which there are no pending claims or applications for permits or leases under the provisions of sections 223–229 of Title 30, Mineral Lands and Mining,[3] or pending applications for United States patent under any law; to conserve, develop, use, and operate the same in his discretion, directly or by contract, lease, or otherwise, and to use, store, exchange, or sell the oil and gas products thereof, and those from all royalty oil from lands in the naval reserves, for the benefit of the United States: *And provided further*, That the rights of any claimant under sections 223–229 of Title 30 are not affected adversely thereby. (U. S. Code, Title 34, sec. 524.)

NOTE.—*Held*, That leases whereunder the lessee was to give "oil certificates" in lieu of royalty oil, redeemable on demand by the Government in four ways, (1) in exchange for construction by the lessee of storage tanks at tide water, (2) in exchange for fuel oil, (3) in exchange for other oil products, and (4) in cash, were not authorized by this statute, being in violation of the Government's oil-conservation policy (43 Stat. 5), the statutory provisions against creation of fuel depots without congressional authority (37 Stat. 891), the statutes prohibiting making of contracts for construction without express authority and appropriations (R. S., secs. 3732, 3733; 34 Stat. 240, 255; 34 Stat. 697, 764), and the laws requiring covering of receipts of sales into the Treasury (R. S., secs. 3617, 3618). *Mammoth Oil Co.* v. *United States*, 275 U. S. 13, 48 Sup. Ct. 1, 72 L. Ed. 137 (1927), affg. 14 Fed. (2d) 705, revg. 5 Fed. (2d) 330.

Held, That a contract for the exchange of royalty oil for fuel oil and storage tanks and for refined products was not authorized by this statute. *Pan American Petroleum & Transport Co. et al.* v. *United States*, 273 U. S. 466, 47 Sup. Ct. 416, 71 L. Ed. 734 (1927).

[3] The scope of this paragraph more fully appears by reference to Secs. 13 to 38 of the act of Feb. 25, 1920 (41 Stat. 437, at p. 441 *et seq.*).

ACT OF FEBRUARY 25, 1928

45 STAT. 148

Naval petroleum reserves; jurisdiction over leases transferred to Secretary of Navy.

Jurisdiction over and the administration and enforcement of all oil and gas leases on lands in naval petroleum reserves issued pursuant to the provisions of section 227 of Title 30 and section 18a of the act approved February 25, 1920 (41 Statutes at Large, page 437), entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," are hereby transferred to the Secretary of the Navy. (U. S. Code, Title 34, sec. 524a.)

NOTE.—*Held*, Congress has plenary power to dispose of and to make all needful rules and regulations respecting the naval oil reserves. *Sinclair* v. *United States* (Dist. Col. 1929), 49 S. Ct. 268, 279 U. S. 263, 73 L. Ed. 692.

ACT OF JUNE 29, 1906 (THE HEPBURN ACT)

34 STAT. 584

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1 of an act entitled "An act to regulate commerce," approved February 4, 1887, be amended so as to read as follows:

"SECTION 1. That the provisions of this act shall apply to any corporation or any person or persons engaged in the transportation of oil, or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this act, and to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment), from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of trans-

shipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: *Provided, however*, That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one State and not shipped to or from a foreign country from or to any State or Territory as aforesaid. (Balance of text omitted.)

NOTE.—Constitutionality was sustained in *United States* v. *Ohio Oil Co.* (The Pipe-Line Cases), 234 U. S. 548, 34 Sup. Ct. 956, 58 L. Ed. 1459 (1914), in which an order of the Interstate Commerce Commission requiring the filing of transportation tariffs was upheld.

ACT OF MAY 21, 1930

46 STAT. 373

Authorization for lease of oil and gas deposits in or under rights of way; by and to whom leased.

Whenever the Secretary of the Interior shall deem it to be consistent with the public interest he is authorized to lease deposits of oil and gas in or under lands embraced in railroad or other rights of way acquired under any law of the United States, whether the same be a base fee or mere easement: *Provided*, That, except as hereinafter authorized, no lease shall be executed hereunder except to the municipality, corporation, firm, association, or individual by whom such right of way was acquired, or to the lawful successor, assignee, or transferee of such municipality, corporation, firm, association, or individual. (U. S. Code, Title 30, sec. 301.)

Assignment of lease; subletting.

The right conferred by this chapter may, subject to the approval of the Secretary of the Interior, be assigned or sublet by the owner thereof to any corporation, firm, association, or individual. (U. S. Code, Title 30, sec. 302.)

Conditions precedent to award of lease; preferred class; bidding.

Prior to the award of any lease under section 301 of this chapter, the Secretary of the Interior shall notify the owner or lessee of adjoining lands and allow him a reasonable time, to be fixed in the notice given, within which to submit an offer or bid of the amount or percentage of compensatory royalty that such owner will agree to pay for the extraction through wells on his or its adjoining land, of the oil or gas under and from such adjoining right of way, and at the same time afford the holder of the railroad or other right of way a like opportunity within the same time to submit its bid or offer as to the amount or percentage of royalty it will agree to pay, if a lease for the extraction of the oil and gas deposits under the right of way be awarded to the holder of such right of way. In case of competing offers by the said parties in interest, the Secretary shall award the right to extract the oil and gas to the bidder, duly qualified, making the offer in his opinion most advantageous to the United States. In case but one bid or offer is received after notice duly given, he may, in his discretion, award the right to extract the oil and gas to such bidder. (U. S. Code, Title 30, sec. 303.)

Provisions authorized in lease.

Any lease granted by the Secretary of the Interior pursuant to this chapter may, in the discretion of said Secretary, contain a provision giving the lessee the right, with the approval of said Secretary, to shut down the operation of any well or wells the operation of which has become unprofitable, to resume operations when such resumption may result in profit, and to abandon any well or wells that cease to produce oil and/or gas in paying quantities. (U. S. Code, Title 30, sec. 304.)

Royalties under lease.

The royalty to be paid to the United States under any lease to be issued, or agreement made pursuant to this chapter, shall be determined by the Secretary of the Interior, in no case to be less than 12½ per centum in amount or value of the production, nor for more than twenty years: *Provided*, That when the oil or gas is produced from land adjacent to the right of way the amount or value of the royalty to be paid to the United States shall be within the discretion of the Secretary of the Interior: *Provided further*, That when the daily average production of any oil well does not exceed ten barrels per day said Secretary may, in his discretion, reduce the royalty on subsequent production. (U. S. Code, Title 30, sec. 305.)

Rules and regulations.

The Secretary of the Interior is authorized and directed to adopt rules and regulations governing the exercise of the discretion and authority conferred by this chapter, which rules and regulations shall constitute a part of any application or lease hereunder. (U. S. Code, Title 30, sec. 306.)

SUMMARY OF REGULATIONS

APPROVED JULY 1, 1926; AMENDED SEPT. 14, 1929 AND JAN. 20, 1931

Sec. 1: Powers and duty of supervisor.

(A) "To visit from time to time leased lands where operations for the discovery or production of oil and gas are conducted, to inspect and supervise such operations with a view to preventing waste of oil and gas, damage to formations or deposits containing oil, gas, or water or to coal measures or other mineral deposits, injury to life or property, or economic waste; and to issue, in accordance with the provisions of the lease and these regulations, such necessary instructions to lessees as will effectively prevent such waste or damage."

(B) To report to the Director of the Geological Survey.

(C) To prescribe reports and records.

(D) To require tests.

(E) To require correction of conditions which are damaging formations or causing waste.

(F) To limit allowable percentage of potential flow of gas well.

(G) To assist lessees in making tests and experiments for increasing efficiency of operation.

(H) "To compile records of production and determine the amount and value of royalty, to estimate drainage and compute losses to the United States resulting therefrom, and to estimate the amount and value of natural gas wasted. The supervisor shall order payment to the United States by means of a statement rendered monthly to each lessee or his representative showing for his lease the amount of oil, gas, and natural gas gasoline produced and the amount due the United States as royalty; the losses by reason of estimated drainage and the compensation due the United States as reimbursement; and, except as to any disposal of natural gas that shall have been determined by the Secretary of the Interior to be sanctioned by the laws of the United States and of the State in which it occurs, the amount and full value computed at a price of not less than 5 cents per 1,000 cubic feet of all natural gas wasted by blowing, release, or escape into the air, or otherwise. Statements so rendered shall be subject to the right of appeal as provided in section 6 of these regulations."

(I) To grant pipe-line companies authority to receive oil or gas from leased lands.

(J) To grant or reject temporary relief pending action by the Geological Survey or the department.

(K) "To require, by written notice, immediate suspension of any operation or practice contrary to the requirements of these regulations or to the written orders of the supervisor or his representative until the lessee shall have complied with such requirements or orders."

(L) To receive and transmit appeals from his orders.

Sec. 2: Requirements for lessees (including permittees).

(A) "The lessee shall conform to the terms of the lease or permit and regulations and to the written instructions of the supervisor or his representatives and shall take precautions to prevent waste of oil or gas, damage to formations or deposits bearing oil, gas, or water or to coal measures or other mineral deposits, injury to life or property, or economic waste."

(B) To designate a local agent.

(C) To space wells 200 feet from lease boundaries unless on supervisors' written permission; spacing of 660 feet between wells on naval reserves, unless adjoining lessee consents.

(D) Approval by supervisor required before beginning to drill, redrill, make water shut-off or formation test, deepen, shoot, plug, or abandon any well or alter casing.

(E) Identification signs for wells and markers for abandoned wells required.

(F) Drilling records required to be kept and filed.

(G) Precautions against gas pressure required.

(H) Slush pit required when drilling with cable tools.

(I) Auxiliary mud pit for heavy mud required for emergencies, when drilling with rotary tools.

(J) Water shut-off required before drilling into oil or gas sand or completing operations. Formation tests required.

(K) Deepening forbidden unless upper strata are protected.

(L) "The lessee shall prevent any oil or gas well from blowing open and shall take immediate steps and exercise due diligence to bring under control any 'wild' or burning oil or gas well or water well."

(M) Elimination or treatment of emulsion required.

(N) Pollution of surface land or streams forbidden.

(O) Gauging of all oil run is required.

(P) Written approval of plans and method of abandonment required.

(Q) "The lessee shall prevent the waste of natural gas or its wasteful utilization. The use of gas in its natural state in engines, pumps, or similar equipment where its pressure is the direct operating force is prohibited unless the exhaust gas is conserved for use as fuel or unless special permission is obtained from the supervisor or his representative."

(R) Precaution against fires required.

(S) Approval of all sales contracts, by the Secretary, is required.

(T) Applications for relief authorized.

(U) Immediate obedience to orders of the supervisor and his representatives is required, subject to the right of appeal provided in section 6 of the regulations.

Sec. 3: Method of computing oil royalties (OMITTED).

Sec. 4: Natural gas and gasoline royalties.

(A) Measurement methods for natural gas prescribed.

(B) Manner of computation prescribed (in general).

(C) On natural gas.

(D) On natural gas-gasoline.

(E) Modification of royalties under special circumstances authorized.

(F) Royalty on drip gasoline prescribed.

(G) Determination of gasoline content of natural gas prescribed.

(H) Quantity basis for computing gasoline royalty stated.

Sec. 5: Reports to be made by lessees outlined.

Sec. 6: Appeals to the Secretary of the Interior.

The lessee must immediately obey all orders intended to carry out the terms and spirit of these regulations, whether issued directly by the supervisor or through his representative (see section 2) or sent to the lessee or his agent by ordinary mail, but any such order after being put into effect by the lessee shall be subject to review by the Secretary of the Interior upon appeal to him filed by the lessee with the supervisor or his representative within 30 days after the order has been served.

The administration of these regulations shall be under the direction of the Geological Survey.

UNIT OPERATION INSTRUCTIONS AND REGULATIONS

APRIL 4, 1932.

The Commissioner of the General Land Office.

SIR:

Attached are regulations under which the issuance of oil and gas prospecting permits, suspended since March 13, 1929, may be resumed. They have as their objectives, first, equality of opportunity for small as well as large interests; second, actual development in lieu of speculative conditions prevailing prior to March, 1929; third, rational control of production and protection of correlative rights through unit operation; fourth, ratable sharing of market outlet by all permittees on a structure; and fifth, recognition of a preference right in favor of those applicants and permit holders whom the order of March 13, 1929, affected.

These regulations will be promulgated immediately. However, a 60-day preference period is provided for permittees and applicants whose claims were pending on March 13, 1929, and were rejected under the order of that date.

Since March 13, 1929, no prospecting permits have been issued or extended unless equities existed prior to that date and then only on condition of restricted drilling, and consequently the public domain has not contributed to the conditions of over-drilling and potential over-production which the oil-producing States have been endeavoring to correct during this period. The department's action was sustained by the United States Supreme Court.

However, during this period legislation authorizing unit operation has been enacted. It has now had several months' working trial, and our experience under it affords a basis for renewed exploration on the public domain without injuring conservation of our irreplaceable oil and gas resources.

In general, the attached regulations require that certain stipulations accompany any application for a prospecting permit. These stipulations do not impair the permittee's privilege to drill immediately, if he so desires, but do require that prior to the expiration date of the permit a cooperative development plan for the entire structure be submitted, and that when and if production is obtained, the area be produced under a unit plan of operation which, under the direction of the permittees, themselves, and under the general supervision of the Secretary of the Interior, will insure a ratable share of production to all of them on the same structure, and, at the same time, insure against over-production and consequent waste. It is anticipated that many permittees will voluntarily work out their cooperative plan in advance and prospect in accordance with it.

The permittees will also be bound by certain other stipulations, including compliance with both Federal and State conservation laws.

Very truly yours,

RAY LYMAN WILBUR.

REGULATIONS GOVERNING APPLICATIONS

FOR OIL AND GAS PROSPECTING PERMITS
SUBJECT TO UNIT OPERATION

1. *Stipulations to accompany permit applications:*

Registers of the district land offices will receive applications for oil and gas prospecting permits when tendered in accordance with existing regulations, Circular No. 672, and in addition containing the following stipulations:

The applicant consents and agrees that any permit or lease issued under his application shall be subject to the following additional provisions which shall bind himself, his successors, assigns, and all others claiming under or through him.

(A) COOPERATIVE PROSPECTING DEVELOPMENT AND UNIT PLANS: The applicant agrees to submit to the Secretary of the Interior for his approval within two years from the date of the permit an acceptable plan for the prospecting and development as a unit of the pool, field, or area affecting the permit land, with evidence either that such plan has been agreed to by the parties in interest and will insure effective unit operation if oil or gas is discovered, or that in the event of failure to so agree the parties will conform to such plan as the Secretary may prescribe, which shall adequately protect the correlative rights of all permittees and other parties in interest, including the United States.

(B) LEASES: The applicant agrees that in the event of a discovery of oil or gas he will promptly apply for leases on the entire permit area.

(C) NO PRODUCTION EXCEPT UNDER UNIT OPERATION OR OTHER COOPERATIVE PLAN: The applicant agrees that no oil or gas in commercial quantities shall be produced except pursuant to a plan of unit operation, or other cooperative plan approved by the Secretary of the Interior.

(D) OPERATING METHODS: The applicant agrees to conform to regulations of the Secretary which may likewise be incorporated in any cooperative or unit plan of development or operation approved, as to location and spacing of wells, time and method of drilling, well casing and production programs as may in the opinion of the Secretary be necessary to secure the conservation or increased ultimate recovery of oil and gas.

(E) STATE AND FEDERAL CONSERVATION LAWS: The applicant agrees to comply with all State and Federal laws, regulations, and orders and to conform to any allowance of production fixed for the field, pool, or area by the State in which the permit land is situated and to proration of market outlet equitably among all producers of said field, pool, or area.

(F) DRAINAGE: The applicant agrees on demand to protect the United States currently against loss of royalty through drainage from the permit area (except such loss as may be occasioned by operations under a cooperative or unit plan, regularly adopted and approved, of which the permit is a part), the amount of such drainage and the loss of royalty resulting therefrom to be fixed monthly by the supervisor of oil and gas operations subject to the right of appeal to the Secretary of the Interior, whose decision shall be final.

(G) ASSIGNMENTS: The applicant agrees to make no assignment or other disposal of interest, whether royalty, working, or otherwise, except with the approval of the Secretary of the Interior.

2. *Preferences in permit applications:*

Permit applications conforming to section 1 above, filed within 60 days from the date of these regulations by persons or corporations who, on March 13, 1929, held permits embracing the same lands, but which were canceled pursuant to order of that date, or had filed applications therefor which were otherwise in good standing on that date, but which have been heretofore rejected pursuant to said order, shall be accorded preference over any other applications received during said 60-day period.

3. *Failure to file satisfactory plan:*

If, within two years from the date of the permit, the holder has not submitted to the Secretary of the Interior a plan with showings conforming to section 1 hereof, or if such plan is rejected in the public interest, the permit will be subject to cancellation.

4. *Determination of geological structure:*

Upon the request of any permittee, for the purpose of formulating a cooperative or unit plan hereunder, the area logically subject to unitization with the holdings of that permittee will be designated by the United States Geological Survey.

5. *Outstanding permits:*

Holders of outstanding permits which have been extended on conditions restricting drilling may be relieved of said conditions upon execution and filing of the stipulation specified in section 1 hereof, and approval thereof by the Secretary of the Interior.

APPROVED: April 4, 1932.

RAY LYMAN WILBUR,
Secretary.

INSTRUCTIONS RE ABANDONED WELLS

Letter of April 23, 1928, Secretary of the Interior to the Director of the Geological Survey and Commissioner of the General Land Office, states procedure for abandoning wells at Government expense and proceeding against the owners and sureties.

STATE OF ALABAMA

LEGISLATION— PAGE

1923: Code, 1923, ch. 197, title "Oil and Gas" 27

REGULATIONS—*None.*

STATE OF ALABAMA

CODE, 1923, CHAPTER 197, TITLE, "OIL AND GAS"

5085. Wells to be shut in to prevent escape of gas; exception.

Any person, firm, or corporation in possession, either as owner, lessee, agent, or manager of any well producing natural gas in this State, in order to prevent the said gas from wasting by escape, shall, immediately after penetrating gas-bearing rock, in any well hereafter drilled, shut in and confine the gas in said well until and during such time as the gas therein shall be utilized for light, fuel, or other purposes; but this shall not apply to any well operated for oil. When in the process of drilling, gas production is developed, 10 days' free time shall be allowed in which to determine whether the well shall be shut and saved for a gas well or drilled in further for the purpose of producing oil; but this section shall not apply to water bearing gas wells that are necessary to keep open in order to preserve them for gas wells. (Approved April 22, 1911; Gen. Acts, Alabama, 1911, p. 614.)

5086. Leakage, etc., not permitted.

No person, firm, or corporation either as owner, lessee, agent, or manager of any well or pipe line, in this State through which natural gas flows from wells utilized for the production of gas, shall allow any unnecessary leak or waste to occur from said line or wells, or to burn the same except for necessary purposes for light, fuel, or power. (Ibid.)

5087. Flambeau lights prohibited.

No person shall use natural gas for illuminating purposes in what is known as flambeau lights or in lights other than regulation burners that consume more than the amount of gas necessary for such purposes, but nothing in this chapter shall prohibit the use of "jumbo" burners or other burners consuming no more gas than such "jumbo" burners nor the burning of flambeau lights not to exceed four in number within or near the derrick of any drilling well, and then only while the same is being operated at night.

5088. Refuse not to be run in streams.

No inflammable production from any oil or gas well shall be permitted to run into any tank, pool, or stream, used for watering stock;

and all waste oil and refuse from tanks or wells shall be drilled into proper receptacles at a safe distance from the tanks, wells, or buildings, and be immediately burned or transported from the premises, and in no case shall it be permitted to flow over the land. Salt water shall not be negligently allowed to flow over the surface of the land.

5089. Plugging of dry wells.

All lessees or operators drilling or operating for crude or petroleum oil or natural gas within this State shall, immediately and in a practical and workmanlike manner, plug all dry or abandoned oil and gas wells in which oil or gas-bearing stratum has been found, in the following manner: Beginning at the bottom of the hole, same shall be solidly filled with crushed rock or sand pumpings or both to a point 25 feet above the top level of the oil or gas bearing sand; at that point a wooden plug of seasoned pine at least 4 feet in length and not less than one-half inch in diameter less than the inside diameter of the hole at that point shall be placed; thereafter the hole shall be filled up solidly 25 feet further with crushed rock or sand pumpings; thereafter another plug of seasoned pine not less than 4 feet in length and not less than one-half inch in diameter less than the inside diameter of the hole at that point shall be placed; thereafter the hole shall be filled up solidly 25 feet further with crushed rock and sand pumpings or both. When any such lessee or operator shall remove the derrick from and around said wells or abandons such wells, he shall plug such wells in some good and substantial manner at least 10 feet below the surface and fill the same from that point to the surface with such material as will prevent the well from caving in before final abandonment.

5090. Unlawful to set fire to gas or oil.

No person, firm, or corporation shall maliciously set fire to any gas or oil escaping from wells, broken or leaking mains, pipes, valves, tanks, or other appliances used by any person, firm, or corporation in conveying gas or oil; or shall interfere in any manner with the wells, pipes, mains, gate boxes, valves, stopcocks, or other appliances, machinery, or property of any person, firm, or corporation engaged in furnishing gas or oil, unless employed by or acting under the authority and direction of any such person, firm, or corporation owning or operating said gas or oil lines or wells, or other proper legal authorities.

5091. Well to be encased.

The owner or operator of any well put down for the purpose of exploring for or producing oil or gas shall, before drilling into the oil or gas-bearing rock, encase the well with good and sufficient casing and in such manner as to exclude all surface water, fresh water, or salt water from penetrating the oil or gas-bearing rock or sand. Should any well be put down through the first into a lower oil or gas-bearing rock, the same shall be cased in such manner as to exclude all fresh, surface, or salt water from both upper and lower gas-bearing rocks penetrated.

5092. Penalty for violation.

Any person, firm, or corporation violating any of the provisions of this chapter shall, upon conviction thereof, be fined not to exceed $500, or sentenced to hard labor for not exceeding six months, or both.

5093. Acts treated as separate offense.

After the lapse of 10 days, unavoidable accidents excepted, from the bringing in of any gas or oil wells, each and every day that said well is permitted to go uncontrolled or uncared for, as directed by this chapter, shall be treated as a separate offense.

5094. Failure to plug, owner of land or adjoining land may plug.

If any owner, lessee, or operator fails to comply with or inefficiently complies with the provisions of this chapter as to plugging abandoned wells or wells where operation has ceased, the owner of the land upon which said well or wells is located, or any adjoining or adjacent owner of land or of gas and oil rights, or any person interested, may (after first giving 20 days' notice to such owner, lessee, or operator, or his manager or superintendent so to do, which notice may be served personally or left in a conspicuous place at the well or wells where the work should be done) forthwith take possession of such wells or well and fully comply with the provisions of this chapter or employ competent persons so to do.

5095. Cost and expense of plugging paid by owner; lien for.

The reasonable cost and expense of so plugging such well or wells shall forthwith be paid by the owner, lessee, or operator, and the amount of such cost and expense shall be a lien upon the fixtures, machinery, and leasehold interest or other property belonging to the lessee, operator, or owner of the wells, and may be recovered in any court having jurisdiction in the county where the wells are located, and proof of the fact of notice and the performance of the work of plugging such wells shall be prima facie evidence of the fact of such liability.

5096. Enforcement of lien.

Any person seeking to enforce a lien as provided in this chapter shall file a statement in writing of such fact in the office of the judge of probate in the county where the well or wells is located, describing as accurately as possible the property on which the lien is claimed, within 30 days after the completion of the work.

5097. Appointment of person to inspect, and amount appropriated.

If it should appear to the governor to efficiently carry out the provisions of this chapter, the interest of the public demands the services of a person to superintend the work and enforce the provisions as herein provided, he may employ, subject to removal by him, some person of ability and experience in operating and drilling oil and gas wells for such time and such salary as may be necessary. Whenever it becomes necessary to plug a well as required by law, the lessee or operator thereof shall notify such person, whereupon he shall visit said well or wells and supervise the plugging thereof. The owner or lessee or operator of the well shall furnish such person with a true and correct copy of the log of the well, verified by affidavit. If it shall be made to appear to such person that any well has not been sufficiently plugged, he may require it being done in proper manner, and a failure so to do on the part of the owner, lessee, or operator shall be a violation of the provisions of this chapter. There is appropriated the sum of $4,000, or so much thereof as may be necessary, not otherwise appropriated, for the purpose of carrying out the provisions of this chapter.

STATE OF ARKANSAS

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STATE OF ARKANSAS

ACT 664 OF 1923

ACT 664, ACTS OF ARKANSAS (GENERAL), 1923, P. 555

APPROVED MARCH 23, 1923

AN ACT to conserve crude oil or petroleum and natural gas; abolish the office of State gas inspector; invest the Arkansas Railroad Commission with power to promulgate rules and regulations to further conserve crude oil and natural gas and regulate the production thereof; provide State conservation agents; actions for injunctions to enforce conservation laws and regulations; repeal of laws in conflict herewith; and for other purposes.

Be it enacted by the GENERAL ASSEMBLY of the State of Arkansas:

[*Waste prohibited—Approved methods to be used.*]

SECTION 1. All operators, contractors, or drillers, pipe-line companies, gas distributors, or individuals drilling for or producing crude oil or natural gas, or piping oil or gas for any purpose, shall take every possible precaution in accordance with the most approved method to stop and prevent all waste of oil and gas, or both, in drilling and producing operations, storage, or in piping or distributing, and shall not wastefully utilize oil or gas, or allow same to leak or escape from natural reservoirs, wells, tanks, containers, or pipes; and it shall be unlawful for natural gas, crude oil, or petroleum to be produced in this State in any manner or under any such conditions as to constitute waste.

[*"Waste" defined.*]

SEC. 2. The term " waste " as above used, in addition to ordinary meaning, shall include (1) escape of natural gas in commercial quantities into the open air; (2) the intentional drowning with water of gas stratum capable of producing gas in commercial quantities; (3) underground waste; (4) the permitting of any natural-gas well to wastefully burn; and (5) the wasteful utilization of such gas; and gas stratum showing a well defined gas sign and producing gas shall be considered capable of producing gas in commercial quantities, and any gas coming from such stratum or sand shall be considered a commercial quantity, and such stratum or sign shall be protected as though it produced gas in excess of 2,000,000 feet per day of 24 hours.

[*Gas to be confined—Strata to be protected.*]

SEC. 3. Whenever natural gas in commercial quantities or gas-bearing stratum known to contain natural gas in such quantities is encountered in any well drilled for oil or gas in this State, such gas shall be confined to its original stratum until such time as the same can be produced and utilized without waste, and all such strata shall be adequately protected from infiltrating water.

[*Restrictions on natural flow of gas.*]

SEC. 4. Whenever the full productions from common source of supply of natural gas in this State is in excess of the market demands, then any person, firm, or corporation having the right to drill into and produce gas from any such common source of supply may take therefrom only such proportion of the natural gas that may be marketed without waste as the natural flow of the well or wells owned or controlled by any such persons, firm, or corporation bears to the total natural flow of such common source of supply, having due regard to the acreage drained by each well in such manner as to prevent any such person, firm, or corporation securing any unfair proportion of the gas therefrom: *Provided*, That the Arkansas Railroad Commission may, by proper order, permit the taking of a greater amount whenever it shall deem such taking reasonable or equitable.

NOTE.—The State Board of Conservation (act 221 of 1927) now functions as to oil and gas conservation in place of the Railroad Commission.

[*Common purchasers; gas.*]

SEC. 5. Every person, firm, or corporation, now or hereinafter engaged in the business of purchasing and selling natural gas in this State, shall be a common purchaser thereof, and shall purchase all of the natural gas which may be offered for sale, and which may reasonably be reached by its trunk lines, or gathering lines, without discrimination in favor of one producer against another, or in favor of any one source of supply as against another: *Provided*, That the Arkansas Railroad Commission after due notice and hearing may permit any such person, firm, or corporation unable to purchase all of the gas so offered to purchase less amounts than that offered, conditioned that the purchase shall be ratable from and among all producers offering to sell such natural gas.

NOTE.—See note under section 4.

[*Discrimination forbidden.*]

SEC. 6. No common purchaser shall discriminate between like grades and pressures of natural gas, or in favor of its own production or of production in which it may be directly or indirectly interested, either in whole or in part, but for the purpose of prorating the natural gas to be marketed, such production shall be treated in like manner as that of any other producer or persons, and shall be taken only in the ratable proportion such production bears to the total production available for marketing: *Provided*, That the provisions of sections 5 and 6 of this act shall not apply to any person, firm, or corporation where such person, firm, or corporation shall drill or own gas production in sufficient quantities to meet his or its requirements.

[*Approved methods of preventing waste to be used.*]

SEC. 7. All operators, contractors, or drillers, pipe-line companies, gas-distributing companies or individuals drilling for or producing crude oil or natural gas, or piping oil or gas for any purpose, shall use every possible precaution in accordance with the most approved methods to stop and prevent waste of oil and gas, or both, in drilling and producing operations, storage, or in piping or distributing, and shall not wastefully utilize oil or gas, or allow same to leak or escape from natural reservoirs, wells, tanks, containers, or pipes.

[*Notice to be given commission.*]

SEC. 8. Notice shall be given to the Arkansas Railroad Commission or conservation agent of the intention to drill, deepen, or plug any well or wells and of the exact location of each and every such well. In case of drilling, notice should be given at least five days prior to the commencement of drilling operations.

NOTE.—See note under section 4.

[*Plugging dry and abandoned wells.*]

SEC. 9. And all dry or abandoned wells must be plugged by confining all oil, gas, or water in the strata in which they occur by the use of mud-laden fluid and in addition to mud-laden fluid, cement and plugs may be used, and all such wells shall first be thoroughly cleaned out of the bottom of the hole and before the casing is removed from the hole, the hole shall be filled from the bottom to the top with mud-laden fluid of maximum density and which shall weigh at least 25 per cent more than equal volume of water: *Provided*, The Arkansas Railroad Commission may direct that some other method shall be used; and before plugging dry and abandoned wells, notice shall be given to the Arkansas Railroad Commission or its conservation agent in the field and to all available adjoining lease and property owners and representatives of such lease and property owners may, in addition to the oil and gas conservation agent of the

commission, be present to witness the plugging of these wells, if they so desire, but plugging shall not be delayed because of the inability to deliver notices to adjoining lease and property owners.

NOTE.—See note under section 4.

[*Log and plugging record to be filed.*]

SEC. 10. The owner or operator shall, upon the completion of any well, file with the Arkansas Railroad Commission or conservation agent a complete record or log of the same, duly signed and sworn to, upon the blanks to be furnished by the commission upon application; and upon plugging any well for any cause whatsoever, a complete record of the plugging thereof shall be made out and duly verified on blanks to be furnished by the commission.

NOTE.—See note under section 4.

[*Proper anchorage to be laid.*]

SEC. 11. Before any well is begun in any field where it is not known that high pressure does not exist, proper anchorage shall be laid, so that the control casing head may be used on the inner string of casing at all times, and this type of casing head shall be kept in constant use unless it is known from previous experience and operations on wells adjacent to the one being drilled that high pressure does not exist or will not be encountered therein.

[*Equipment for conserving natural gas shall be provided before "drilling in."*]

SEC. 12. In all proven or well-defined gas fields, or where it can reasonably be expected that gas in commercial quantities will be encountered, adequate preparation shall be made for the conservation of gas before "drilling in" any well; and the gas sands shall not be penetrated until equipment, including mud pumps, lubricators, and other necessary machinery for "mudding in" all gas strata or sands, shall have been provided.

[*Strata to be sealed off; production from different strata restricted.*]

SEC. 13. No well shall be permitted to produce both oil and gas from different strata unless it be in such manner as to prevent waste of any character to either product. If a stratum should be encountered bearing gas and the owner, operator, or contractor should go deeper in search for other gas or oil bearing sands, the stratum first penetrated and likewise each and every sand in turn shall be closed separately, and if it is not wanted for immediate use, it shall be securely shut in so as to prevent waste, either open or underground.

[*Protection of gas.*]

SEC. 14. No operator shall drill a well into an oil or gas producing sand with water from a higher formation in the hole, or with sufficient head of water introduced into the hole to prevent gas flowing to the surface. The well shall either be allowed to blow until the sand has been drilled in or it shall be drilled in under a head of fluid consisting of not less than 25 per cent mud; but in no case shall gas be allowed to blow for a longer period than three days. Mud fluid used for protecting oil and gas bearing sands in upper formations while oil or gas is being produced from deeper formations, shall have density of not less than 25 per cent mud and shall contain not less than 25 per cent mud.

[*Mud-laden fluid to be applied in pulling casing.*]

SEC. 15. No outside casing from any oil or gas well in an unexhausted oil or gas field shall be pulled without first flooding the well with mud-laden fluid behind the inside string of casing, after unseating the casing, and as casing is withdrawn well shall be kept full to top with said mud-laden fluid and same shall be left in the hole, and said mud-laden fluid shall be so applied as to effectively seal off all fresh or salt water strata and all oil or gas strata not being utilized.

[*Gas and oil to be separated and gas conserved.*]

SEC. 16. No gas found in the upper part of a level or sand which can be separated from the oil in the lower part of the same sand or in a lower or different sand shall be used to flow oil to the surface and all gas, so far as it is possible to do so, shall be separated from the oil and securely protected.

[*Certificate required from pipe-line companies.*]

SEC. 17. Pipe-line companies shall not connect with oil or gas wells until the owners or operators thereof shall furnish a certificate from the Arkansas Railroad Commission that the conservation laws of the State have been complied with: *Provided*, That this rule shall not prevent the temporary connection with any well or wells in order to take care of production and prevent waste until opportunity shall have been given the owner or operator of said well to secure certificate showing compliance with the conservation laws of the State.

NOTE.—See note under section 4.

[*Certificate required from owners or operators.*]

SEC. 18. Owners or operators of oil or gas wells shall, before connecting with any oil or gas pipe line, secure from the Arkansas Rail-

road Commission a certificate showing compliance with the oil and gas conservation laws of the State and conservation orders of the Arkansas Railroad Commission: *Provided*, That this rule shall not prevent temporary connection with pipe lines in order to take care of production until opportunity shall have been given for securing such certificates: *Provided further*, That the owners or operators of such wells shall, in a known or proven field, make application for such certificate in anticipation of production.

NOTE.—See note under section 4.

[*Records of drilling to be kept.*]

SEC. 19. All operators, contractors, or drillers shall keep at each well accurate records of the drilling, redrilling, or deepening of all wells, showing all formation drilled through, casing used, and other information in connection with the drilling operation of any property and any and all of this information shall be furnished the commission upon request or to any conservation agent upon request; conservation agents of the commission shall have access to all wells and to all well records, and all companies, contractors, or drillers shall permit any conservation agent of the Arkansas Railroad Commission to come upon any lease or property operated or controlled by them, and to inspect any and all wells and records of said well or wells and to have access at all times to any and all wells, and any and all records of said wells: *Provided*, That information so obtained by conservation agents shall be considered official information and shall be reported only to the Arkansas Railroad Commission.

NOTE.—See note under section 4.

[*Authority to promulgate regulations.*]

SEC. 20. It shall be the duty of the Arkansas Railroad Commission, and it is hereby fully invested with authority to promulgate all necessary rules and regulations after the contents of any such rule or regulation have been fully published for two consecutive weekly insertions in some newspaper with a bona fide circulation in each county where crude oil or natural gas is being produced in commercial quantities, to further regulate and control all operations for the production and handling of crude oil or natural gas in the State; regulation of pipe lines and pipe-line companies; the storing of gas or oil; prevention of fire; protection to fresh water; fish and fisheries; how producing leases shall be cared for to prevent wastage and discrimination; and to make all other necessary regulations that may conserve crude oil or natural gas.

NOTE.—See note under section 4 of this act. Compare also with Act 221 of 1927, section 4.

[*Penalties.*]

SEC. 21. Any person, firm, or corporation violating any of the provisions of this act or any of the rules or regulations promulgated by the Arkansas Railroad Commission under this act shall be subject to a penalty of not less than $100 nor more than $1,000 for the first offense; and in any sum not less than $500 for the second offense and all subsequent offenses, to be recovered in an action therefor brought by the prosecuting attorney in the name of the State, and a reasonable fee for the prosecuting attorney shall be fixed by the court to be paid in addition to said penalty; said penalty to be turned in to the general road fund of the county where incurred, provided, each day shall constitute a separate offense.

NOTE.—See note under section 4.

SEC. 22. Omitted; relates to appointment of agents. Superseded by Act 221 of 1927, sections 5, 6, infra.

SEC. 23. Omitted; relates to fees. Superseded by Act 125 of 1925, section 2, infra.

[*Injunctions; enforcement.*]

SEC. 24. An action for an injunction at the instance of the Arkansas Railroad Commission, that Attorney General or the prosecuting attorney in the district where the action is to be brought, to enforce the provisions of this act and rules and regulations promulgated by said commission pertaining to the production, conservation, and handling of crude oil and natural gas, may be brought in any county in this State where the law, rules, or regulations are violated.

NOTE.—See note under section 4.

[*Separability.*]

SEC. 25. If any section or part of this act shall have been found to be unconstitutional, such finding shall not operate to render any other section or part thereof unconstitutional.

[*Repeal; emergency.*]

SEC. 26. All laws and parts of laws in conflict herewith are hereby repealed, and this act being necessary for the immediate preservation of the public peace, health, and safety, an emergency is declared to exist, and this act shall take effect and be in force and effect from and after its passage.

(Approved March 23, 1923.)

ACT 42 OF 1925

ACTS OF ARKANSAS, 1925, P. 136; APPROVED FEBRUARY 7, 1925

AN ACT to abolish the office of State oil inspector, to repeal section 5900 of Crawford & Moses's Digest and section 1 of Act 277 of the Acts of 1923, to create the office of commissioner of conservation and inspection and prescribe his duties, and to abolish the conservation department of the railroad commission, etc.

Be it enacted by the GENERAL ASSEMBLY of the State of Arkansas:

SECTION 1. The office of State oil inspector is hereby abolished and section 5900 of Crawford & Moses's Digest and section 1 of Act 277 of the Acts of 1923 is [*sic.*] hereby repealed.

[*Commissioner of conservation and inspection.*]

SEC. 2. There is hereby created and established at the seat of government of this State for a period of 30 years the office of commissioner of conservation and inspection.

NOTE.—Act 221 of 1927, infra, added four honorary members, who, with the commissioner, constitute the State board of conservation.

[*Qualifications of commissioner.*]

SEC. 3. The commissioner of conservation and inspection shall be appointed by the governor immediately after the taking effect of this act, and every four years thereafter. The Senate shall have power to confirm or reject said appointment; but the appointment when made by the governor shall become immediately effective, subject to the right of the Senate to confirm or reject the same any time it may be in session after such appointment shall have been made. Said commissioner of conservation and inspection shall be a resident of this State, at least 30 years of age, and possessed of good business ability.

SEC. 4. Omitted; relates to office space.

SEC. 5. Omitted; relates to official seal.

SEC. 6. Omitted; relates to salary and bond of commissioner.

SEC. 7. Omitted; relates to appointment and salary of deputies. Amended by Act 221 of 1927, section 8, infra.

[*State oil inspector superseded.*]

SEC. 8. Immediately upon the appointment of the commissioner of conservation and inspection, the State oil inspector shall turn over to

him all books, records, papers, instruments, devices, and property of whatsoever kind in his custody and belonging to the office of said State oil inspector, and hereafter the commissioner of conservation and inspection and his deputies shall perform all the duties imposed by law upon the State oil inspector and his deputies.

SEC. 9. Omitted; relates to deputies' bonds.

SEC. 10. Omitted; relates to agricultural inspection, etc.

[*Railroad commission's records transferred.*]

SEC. 11. Immediately after the appointment of said commissioner of conservation and inspection, the Arkansas Railroad Commission shall turn over to him all books, records, papers, and things in its custody relating to the conservation of oil and gas, and hereafter all the duties in relation to conservation of oil and gas imposed by Act 664 of the Acts of 1923, approved March 23, 1923, and other laws of this State, upon said railroad commission and the conservation agents provided for in said act, shall be performed by said commissioner of conservation and inspection and his deputies and assistants.

NOTE.—See note under section 2.

SEC. 12. Omitted; relates to agriculture.

[*Transfer of jurisdiction.*]

SEC. 13. The commissioner of conservation and inspection and his deputies shall have and exercise all the powers now conferred by law upon the State oil inspector and his deputies, * * * and all the powers now conferred by law on the Arkansas Railroad Commission or upon the conservation agents appointed by said commission in relation to the conservation of oil and gas, and all reports now required by law to be filed with said departments, and all fees now required by law to be paid to said departments, and all dealings, now required by law to be had with said departments in relation to the inspection of oils, feed, and fertilizer, and the conservation of oil and gas, shall hereafter be filed with, paid to, and had with the commissioner of conservation and inspection and his deputies.

NOTE.—See note under section 2.

[*Transfer of jurisdiction.*]

SEC. 14. The Arkansas Railroad Commission and the commissioner of mines, manufactures, and agriculture are hereby relieved of all powers and duties relating to the conservation of oil and gas.

SEC. 15. Omitted; relates to agriculture, etc.

SEC. 16. Omitted; relates to agriculture, etc.

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[*Separability.*]

SEC. 17. If any section or clause of this act should be held by the courts to be unconstitutional, such fact shall not impair the validity of the remainder of the act.

[*Repeal.*]

SEC. 18. All laws and parts of laws in conflict herewith are hereby repealed and this act shall take effect and be in force from and after passage.

(Approved February 7, 1925.)

ACT 125 OF 1925

ACT 125 OF 1925, ACTS OF ARKANSAS, 1925, P. 368

APPROVED FEBRUARY 27, 1925

AN ACT to fix the fees to be collected by the commissioner of conservation and inspection, and for other purposes.

Be it enacted by the GENERAL ASSEMBLY of the State of Arkansas:

SECTION 1. Omitted.

SEC. 2. That section 23 of Act No. 664 of the Acts of the General Assembly of 1923 be and the same is hereby amended to read as follows:

"It shall be the duty of the State conservation agents to make a careful inspection of the rig, derrick, and all equipment of any person, firm, or corporation at the time of 'spudding in' or commencing actual drilling operations of each oil or gas well and as often thereafter as may be deemed necessary for the purpose of enforcing the provisions of the act and rules and regulations of the Arkansas Railroad Commission pertaining to the production of crude oil and natural gas; a fee of $25 shall be paid by any person, firm, or corporation, whether owner, driller, or contractor, of every such well. Said State conservation agents shall supervise the plugging of any dry or abandoned well, the extinguishing of every burning oil or gas well, the shooting of any such well setting out salt or fresh water in any improperly drilled or cemented well, and the drawing of the casing of any oil or gas well, for which service there shall be paid a fee of $25 to such conservation agents by said owner. All fees to be collected at the time of inspection or supervision and shall be accounted for with a report each month to the Arkansas Railroad Commission and paid by it into the State general revenue fund."

SECS. 3, 4. Omitted; do not relate to oil.

SEC. 5. Omitted; separability clause.

SEC. 6. Omitted; repeal and emergency clause.

ACT 350 OF 1925

ACTS OF ARKANSAS, 1925, P. 1045; APPROVED APRIL 1, 1925

AN ACT to prohibit the utilization of natural gas in the manufacture of carbon black.

Be it enacted by the GENERAL ASSEMBLY of the State of Arkansas:

[*Use of gas for carbon black prohibited.*]

SECTION 1. The use of natural gas within the State of Arkansas for the purpose of obtaining therefrom by the process of burning the carbon-black content is hereby prohibited.

[*Erection of carbon-black plants prohibited.*]

SEC. 2. The erection, enlargement, maintenance, and operation of any plant or plants in Arkansas for the purpose of burning natural gas to obtain therefrom the carbon-black content is hereby prohibited within this State.

[*Delivery or sale for carbon black prohibited.*]

SEC. 3. No person, firm, or corporation owning or operating any gas well within this State shall use any part of the gas produced from any such well for the purpose of obtaining therefrom by the process of burning the carbon-black content thereof, nor shall any such person, firm, or corporation so owning or operating said well sell or deliver any part of said gas to any other person, firm, or corporation for use by said person, firm, or corporation in obtaining the carbon-black content thereof by the process of burning such gas.

[*Penalties.*]

SEC. 4. Any person, firm, or corporation violating any of the provisions of this act shall be deemed guilty of a misdemeanor and on conviction shall be fined in any sum not less than $1,000 and [*sic*] more than $10,000, and each day that any such plant shall be operated for the purpose of manufacturing carbon black, or each day that any gas shall be used, sold, or delivered from any gas well in violation of the provisions of this act, shall be deemed a separate offense.

[*Abatement.*]

SEC. 5. The erection, maintenance, or operation of any such carbon-black plant in violation of this act, or the use, sale, or delivery of any such natural gas from any gas well in this State, in violation of the provisions of this act, is hereby declared a public nuisance, and the attorney general and the several prosecuting attorneys of this State, and each of them, are hereby authorized and directed to proceed in the name of the State of Arkansas in any court of competent jurisdiction by injunction, mandamus, or other appropriate remedy for the abatement of any such nuisance.

[*Exception: Casing-head gas.*]

SEC. 6. Nothing in this act shall be construed as prohibiting the use of casing-head gas, produced from any oil well, in the manufacture of carbon black.

[*Separability.*]

SEC. 7. If any section, sentence, phrase, or word of this act shall be held in violation of the State or Federal Constitution, the entire act shall not be thereby invalidated, but only so much of said act as is so held unconstitutional shall be invalid, and the remainder of said act shall remain in force.

[*Repeal.*]

SEC. 8. All laws and parts of laws in conflict herewith are hereby repealed.

(Approved April 1, 1925.)

ACT 221 OF 1927

ACT 221, ACTS OF ARKANSAS, 1927, P. 715

APPROVED MARCH 23, 1927

AN ACT to more effectually conserve oil and gas, and by-products, by creating an honorary board of conservation to administer and enforce the laws pertaining to the conservation of oil and gas, and by-products, and for other purposes.

Be it enacted by the GENERAL ASSEMBLY of the State of Arkansas:

[*State board of conservation created.*]

SECTION 1. That there is hereby created a board to be known as the State board of conservation to be composed of the commissioner of conservation and inspection, as now provided for by law, and four

associate honorary members, to be appointed by the governor immediately after this act takes effect, and every two years thereafter. The commissioner of conservation and inspection shall be the chairman of the board.

[*Qualifications of board.*]

SEC. 2. The four honorary members of this board shall each receive his actual expenses in the performance of his duties as such member. Before entering upon the duties of his office, each member of the board shall make and file in the office of the secretary of state a bond to the State of Arkansas in the sum of $500, with good and sufficient security to be approved by the governor, conditioned upon the faithful performance of the duties of his office, and shall take, subscribe, and file in the office of the secretary of state the constitutional oath of office prescribed for State officers. The senate shall have power to confirm or reject said appointments; but the appointment shall become immediately effective, subject to the right of the senate to confirm or reject it when in session after such appointment. The four honorary and associate members of the board shall be resident and citizens of the State of Arkansas, at least 30 years of age, and shall be men experienced in and having fair knowledge of the oil and gas industry and the production, refining, and marketing of oil and gas and their by-products.

[*Jurisdiction of commissioner transferred to board.*]

SEC. 3. The powers, duties, and authority of the commissioner of conservation and inspection, pertaining to oil and gas and their by-products, are hereby transferred to the State board of conservation, and the administration, regulation, and enforcement of the laws of the State of Arkansas, pertaining to oil and gas and their by-products shall be through and under the direction of said board.

[*Authority to promulgate regulations.*]

SEC. 4. The board hereby created shall have full and plenary power and authority to promulgate such reasonable rules and regulations as may be necessary from time to time in the proper administration and enforcement of the law pertaining to the conservation of oil and gas and their by-products, and the law with reference to inspection of oil, gas, gasoline, kerosene, and all other petroleum products. As soon as practicable after the appointment of the members of said board, it is hereby made their duty to draft, adopt, and promulgate such rules and regulations as may be deemed proper to carry into effect the laws pertaining to the conservation of oil and

gas and their by-products, and the inspection of oil, gas, gasoline, kerosene, and all other petroleum products, according to the spirit and intent of such laws, and shall furnish printed copies of said rules and regulations on the request of any person interested.

NOTE.—See also Act 664 of 1923, section 20.

[*Meetings of board.*]

SEC. 5. The office of the board shall be in the State capitol at Little Rock, Ark., and said board shall meet for the transaction of business on the first Monday of each month, and may be convened at any other time upon the call of the chairman, and in his absence or upon his failure to do so, a meeting may be called upon the written request of any two members of the board, it being the duty of the commissioner of conservation and inspection to call a meeting upon such written request. The office at Little Rock shall be the regular meeting place of the board, but meetings may be held in any county in which oil or gas is produced, and the chairman of the board shall have the right to call meetings in any county producing oil or gas if he deems it expedient to do so. Any two members of the board shall also have the right and authority to call a meeting in any county in which oil or gas is produced. All hearings before said board for any violation of any rule or regulation of said board, at the request of any person charged with such violation shall be held in the county in which the violation of such rule or regulation is alleged to have occurred.

[*Deputies.*]

SEC. 6. Said board shall have authority to employ and discharge at will a field deputy, to be known as the chief conservation agent, subject to the approval of the governor, who, under the direction of the State board of conservation, shall be charged with the duty of enforcing all rules and regulations promulgated by said board, at a salary not exceeding $300 per month, and two assistant conservation agents, subject to the approval of the governor, to properly enforce the conservation laws pertaining to oil and gas and their by-products, at a salary of not to exceed $250 per month each. Each of said agents shall devote his entire time to the performance of his official duties. The chief conservation agent and each of the assistant conservation agents herein provided for shall, before entering on the duties of his office, make and file with said commissioner of conservation and inspection bond to the State of Arkansas for the use and benefit of the State and of said commissioner, conditioned upon the faithful performance of the duties of his office.

[*Quorum.*]

SEC. 7. Three members of the board shall constitute a quorum, but three affirmative votes shall be necessary for the adoption or promulgation of any rule or regulation of the board.

[*Deputies.*]

SEC. 8. That section 7 of Act 42 of the acts of 1925 is hereby amended to read as follows:

"The commissioner of conservation and inspection, with the approval of the governor, is hereby authorized to appoint 1 office deputy, at a salary of $3,000 a year; and 9 field deputies, each of whom shall receive a salary of $2,400 a year; 2 clerks, each of whom shall receive a salary of $1,800 a year; 1 chemist, at a salary of $3,000 a year, and 1 assistant chemist at a salary of $2,500 a year; and 2 stenographers, each of whom shall receive a salary of $1,500 a year."

[*Separability.*]

SEC. 9. If any section or clause of this act should be held unconstitutional, it shall not affect the validity of the remainder of the act, or any section thereof.

[*Repeal.*]

SEC. 10. All laws in conflict herewith are repealed.
(Approved March 23, 1927.)

SUMMARY OF RULES AND REGULATIONS

PROMULGATED APRIL 1, 1926

RULE 1. Waste prohibited.

RULE 2. Waste defined.

RULE 3. Gas to be confined, strata to be protected.

RULE 4. Approved methods of preventing waste to be used.

RULE 5. "Commercial quantities" defined.

RULE 6. Gas to be metered.

RULE 7. Notice of intention to drill or deepen required.

RULE 8. Notice of intention to plug required.

RULE 9. Manner of plugging specified.

RULE 10. Log and plugging record to be filed.

RULE 11. Anchorage against high gas pressure required.

RULE 12. Equipment for conserving gas required before "drilling in."

RULE 13. Separate slush pit for making mud required.

RULE 14. Productive strata required to be sealed off before drilling through.

RULE 15. Density of mud in gas areas prescribed.

RULE 16. Mud-laden fluid to be applied in pulling or redeeming casing.

RULE 17. Fresh-water strata to be protected.

RULE 18. Devices for separating gas from oil must be installed.

RULE 19. Gas wells not to produce from different sands at the same time through the same string of casing.

RULE 20. Shooting of wells; notice required; wells damaged irreparably to be abandoned and plugged; protection of strata required.

RULE 21. Production of gas to be restrained to 35 per cent of potential capacity of the well.

RULE 22. Pipe-line companies required to make monthly reports of wells connected and production taken therefrom.

RULE 23. Pipe-line companies prohibited from connecting to a well until its owner or operator has secured a certificate of compliance with conservation laws.

RULE 24. Owners and operators required to secure a certificate of compliance with conservation laws prior to connecting with a pipe line.

RULE 25. Drilling records required to be kept and furnished to the State on request.

RULE 26. Field deputies to have access to all wells and all records.

RULE 27. Pipe lines, whether common carriers or not, prohibited from carrying oil until a permit is secured from the State.

RULE 28. Spacing of wells prescribed (300 feet from other wells, 600 feet in gas territory; 150 feet from property lines; exceptions).

RULE 29. (*1*) Tanks to be surrounded by dikes or ditches of the capacity of the tanks; (*2*) Swabbing into open pits prohibited; (*3*) Steam lines required and boiler spacing specified; (*4*) Oil and gas lines crossing roads required to be buried.

RULE 30. Vacuum pumps prohibited except (A) for casing-head gas gathering; (B) in depleted fields, on special permits.

RULE 31. Identification signs required for wells.

RULE 32. Cementing methods and tests prescribed.

RULE 33. Inspection fees prescribed.

RULE 34. Surface casing cementing methods and depths of setting prescribed.

RULE 35. Secondhand casing required to be tested to 1,000 pounds per square inch.

RULE 36. Blowing of oil or water wells with gas from another well is prohibited.

RULE 37. Bond required. Repealed, and lien on casing substituted.

RULE 38. Casing pullers and pluggers must furnish bond.

RULE 39. Bond to be furnished before "spudding in."

RULE 40. Applicant for permit to drill must give State a lien on casing.

STATE OF CALIFORNIA

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REGULATIONS—*None.*

STATE OF CALIFORNIA

ACT OF MARCH 25, 1911

LAWS 1911, P. 499

AN ACT prohibiting the unnecessary wasting of natural gas into the atmosphere; providing for the capping or otherwise closing of wells from which natural gas flows; and providing penalties for violating the provisions of this act. (Approved March 25, 1911—Calif. Stats. 1911, p. 499.)

SECTION 1. All persons, firms, corporations, and associations are hereby prohibited from willfully permitting any natural gas wastefully to escape into the atmosphere.

SEC. 2. All persons, firms, corporations, or associations digging, drilling, excavating, constructing, or owning or controlling any well from which natural gas flows shall, upon the abandonment of such well, cap or otherwise close the mouth of or entrance to the same in such manner as to prevent the unnecessary or wasteful escape into the atmosphere of such natural gas. And no person, firm, corporation, or association owning or controlling land in which such well or wells are situated shall willfully permit natural gas flowing from such well or wells, wastefully or unnecessarily to escape into the atmosphere.

SEC. 3. Any person, firm, corporation, or association who shall willfully violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than $1,000 or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

SEC. 4. For the purposes of this act each day during which natural gas shall be willfully allowed wastefully or unnecessarily to escape into the atmosphere shall be deemed a separate and distinct violation of this act.

SEC. 5. All acts or parts of acts in conflict herewith are hereby repealed.

SEC. 6. This act shall take effect immediately.

ACT OF MAY 25, 1921

LAWS 1921, P. 409

Forfeiture of interest—What combination of interests legal.

SEC. 12. * * * Any interest held in violation of this act shall be forfeited to the State of California by appropriate proceedings for that purpose in the superior court for the county in which the property or some part thereof is located, except that any ownership or interest forbidden in this act which may be acquired by descent, will, judgment, or decree may be held for 2 years and not longer after its acquisition: *Provided*, That nothing herein contained shall be construed to limit or to prevent any number of lessees under the provisions of this act from combining their several interests so far as may be necessary for the purposes of constructing and carrying on the business of a refinery, or of establishing and constructing as a common carrier a pipe line or lines of railroads to be operated and used by them jointly in the transportation of oil from their several wells, or from the wells of other lessees under this act, or the transportation of coal: *Provided further*, That if any of the lands or deposits leased under the provisions of this act shall be subleased, trusteed, possessed, or controlled by any device permanently, temporarily, directly, indirectly, tacitly, or in any manner whatsoever, so that they form part of or are in anywise controlled by any combination in the form of an unlawful trust with consent of lessee, or form the subject of any contract or conspiracy in restraint of trade * * * the lease thereof shall be forfeited by appropriate court proceedings. (Approved May 25, 1921. In effect July 29, 1921; Stats. 1921, p. 409.)

Rights of way for pipe-line purposes.

SEC. 13. Rights of way through all State lands are hereby granted for pipe-line purposes for the transportation of oil or natural gas to any applicant possessing the qualifications provided in section 4 of this act, to the extent of the ground occupied by the said pipe line and 25 feet on each side of the same under such regulations as to survey, location, application, and use as may be prescribed by the surveyor general and upon the express condition that such pipe lines shall be constructed, operated, and maintained as common carriers: *Provided*, That the surveyor general shall in express terms reserve and shall provide in every lease of oil lands hereunder that the lessee, assignee, or beneficiary, if owner or operator or owner of a controlling interest in any pipe line or of any company operating the same

which may be operated accessible to the oil derived from lands under such lease, shall at reasonable rates and without discrimination accept and convey the oil of the State or of any citizen or company not the owner of any pipe line, operating a lease or purchasing gas or oil under the provisions of this act: *Provided*, That no right of way shall hereafter be granted over said lands for the transportation of oil or natural gas except under and subject to the provisions, limitations, and conditions of this section. Failure to comply with the provisions of this section or the regulations prescribed by the surveyor general shall be ground for forfeiture of the grant by appropriate proceedings prosecuted in the superior court for the county in which the property or some part thereof is located: *And provided further*, That all the rights and privileges as are now or as may hereafter be provided by law, respecting the acquisition of rights of ingress, egress, and regress over the property of another, by proceedings in eminent domain, are hereby expressly given to a permittee or lessee so that such permittee or lessee may carry on the operations contemplated under the terms of this act. (Approved May 25, 1921. In effect July 29, 1921. Session Laws, 1921, p. 410.)

NOTE.—For cases arising under previous common carrier statutes see:

Associated Pipe Line Co. v. *Railroad Commission*, 176 Cal. 518, 169 Pac. 62 (1917), held invalid an order of the Railroad Commission requiring the company, incorporated as a private carrier, to file schedules as a common carrier.

Producers' Transp. Co. v. *R. R. Comn. of Calif.*, 251 U. S. 228, 40 Sup. Ct. 131, 64 L. Ed. 239 (1920), note in 43 Harvard Law R., 1137, held a company which had exercised the right of eminent domain alleging itself to be a common carrier could be required to file schedules as such.

ACT OF JUNE 10, 1915

DEERING, GENERAL LAWS OF CALIFORNIA, 1931
VOL. 2, P. 2398

Laws 1915, p. 1404, as amended by Act of June 1, 1917 (Laws 1917, p. 1586); Act of May 25, 1919 (Laws 1919, p. 1165); Act of June 3, 1921 (Laws 1921, p. 1724); Act of May 28, 1929 (Laws 1929, p. 923); Act of June 12, 1931 (Laws 1931, p. 1644).

AN ACT to protect the natural resources of water, petroleum, and gas from damage, waste, and destruction; relating to the creation of a division in the department of natural resources for the prevention of such damage, waste, and destruction; providing for the appointment of a State oil and gas supervisor; prescribing his duties and powers; fixing his compensation; providing for the appointment of deputies and employees; providing for the inspection of petroleum and gas wells; requiring all persons operating petroleum and gas wells to make certain reports; permitting and authorizing agreements in

the interests of conservation; providing for suits by the director of the department of natural resources in the name of the people of the State of California; providing procedure for arbitration of departmental rulings; creating a fund for the purposes of the act; providing for assessment of charges to be paid by operators and providing for the collection thereof; providing for bonds required of drillers of oil and gas wells; and making an appropriation for the purposes of this act.

State oil and gas supervisor.

SECTION 1. The division of the department of natural resources now or hereafter created for the supervision of petroleum and gas shall be in charge of a chief to be known as State oil and gas supervisor.

SEC. 2. Repealed.

Duties of supervisor—Water protection—Prevention of blow-outs, etc.

SEC. 3. It shall be the duty of the State oil and gas supervisor so to supervise the drilling, operation, and maintenance and abandonment of petroleum or gas wells or wells for the discovery of petroleum or gas in the State of California, as to prevent, as far as possible, damage to underground petroleum and gas deposits from infiltrating water and other causes and loss of petroleum and natural gas and damage to underground and surface waters suitable for irrigation or domestic purposes from the infiltration therein, or the addition thereto, of substances detrimental thereto, by reason of such drilling, operation, maintenance, or abandonment of such wells. It shall be the duty of any person, firm, or corporation engaged in operating any petroleum or gas well in this State wherein high-pressure gas is known to exist, and any person, firm, or corporation drilling for petroleum or gas in any district in this State where the pressure of petroleum or gas is unknown, to equip any such well with casings of sufficient strength, and such other safety devices as may be necessary, in accordance with methods approved by the State oil and gas supervisor, and to use every effort and endeavor to effectually prevent blow-outs, explosions, and fires.

(As amended June 12, 1931.)

Appointment of deputies and attorneys.

SEC. 4. It shall be the duty of the State oil and gas supervisor to appoint one chief deputy and five field deputies, one for each of the districts hereinafter provided for, and prescribe their duties and fix their compensation. Such deputies shall serve during the pleasure of the supervisor. The director of natural resources shall have

power to appoint two attorneys; one attorney so appointed shall receive a salary to be fixed by the director not exceeding $3,000 per annum and the other shall receive a salary to be fixed by the director of natural resources subject to the approval of the governor. The supervisor, the deputies, and the attorneys shall not be subject to the civil service act.

[*Duties of deputies.*]

SEC. 5. The chief deputy appointed by the supervisor shall be a competent engineer or geologist experienced in the development and production of petroleum; and each field deputy shall be either a competent engineer or geologist, experienced in the development and production of petroleum, or shall be a competent and experienced oil operator, having had not less than five years' actual experience in the oil fields of the State of California. At the time any field deputy is appointed, notice of such appointment shall be transmitted in writing to the board of commissioners of the district for which said deputy is appointed, which field deputy shall maintain an office in the district for which he is appointed, convenient of access to the petroleum and gas operators therein. The office shall be open and the deputy shall be present at certain specified times, which shall be posted at such office.

[*Data and maps.*]

SEC. 6. It shall be the duty of each deputy to collect all necessary information regarding the oil and gas wells in the district, with a view to determining the presence and source of water in the oil sand and the location and extent of strata bearing water suitable for irrigation or domestic purposes that might be affected thereby, and to make all maps and other accessories necessary to determine the presence and source of water in the oil sands and the location and extent of strata bearing water suitable for irrigation or domestic purposes or surface water suitable for such purposes. This work shall be done with the view to advising the operators as to the best means of protecting the oil and gas sands and the said water-bearing strata and surface water, and with a view to aiding the supervisor in ordering tests or repair work at wells. All such data shall be kept on file in the office of the deputy oil and gas supervisor of the respective district.

(As amended June 12, 1931.)

Records and their use.

SEC. 7. The records of any and all operators, when filed with the deputy supervisor, as hereinafter provided, shall be open to inspec-

tion to those authorized in writing by such operators, to the State officers, and to the board of commissioners hereinafter provided for. Such records shall in no case other than those hereinafter and in this section provided be available as evidence in court proceedings, and no officer or employee or member of any board of commissioners shall be allowed to give testimony as to the contents of said records, except at such court proceedings as are hereinafter provided for in the review of the decision of the State oil and gas supervisor, or a board of commissioners, or in any proceedings initiated for the enforcement of an order of the supervisor, or any proceeding initiated for the enforcement of a lien created by this act, or any proceeding for the collection of the assessment levied under and pursuant to the provisions of this act or in criminal proceedings arising out of such records, or the statements upon which they are based. Copies of all documents, orders, requisitions, or decisions made, executed, or issued by the supervisor or his deputy, when certified by the supervisor or his deputy to be true copies of the original thereof, shall be received in evidence in all proceedings herein provided, in like manner and with the same effect as the original.

Orders by supervisor—Agents of operators.

SEC. 8. It shall be the duty of the supervisor to order such tests or remedial work as in his judgment are necessary to protect the petroleum and gas deposits from damage by underground water, or to prevent the escape of water into underground formations, or to prevent the infiltration of detrimental substances into underground or surface water suitable for irrigation or domestic purposes, to the best interests of the neighboring property owners and the public at large. The order shall be in written form, signed by the supervisor, and shall be served upon the owner of the well, or the local agent appointed by such owner, either personally or by mailing a copy of said order to the post-office address given at the time the local agent is designated, or if no such local agent has been designated, by mailing a copy of said order to the last known post-office address of said owner, or if the owner be unknown by posting a copy of said order in a conspicuous place upon the property, and publishing the same in some newspaper of general circulation throughout the county in which said well is located once a week for two successive weeks. Said order shall specify the conditions sought to be remedied and the work necessary to protect such deposits from damage from underground water.

Whenever the supervisor or any deputy makes or gives any written direction concerning the drilling, testing, or other operations in any oil or gas well drilled, in process of drilling or being abandoned, and the operator, owner, or representative of either, serves written notice

either personally or by mail, addressed to the supervisor or his deputy at his office in the district, requesting that a definite order be made upon such subject, the supervisor or his deputies shall, within five days after such notice, deliver a final written order on such subject matter in such manner and form that an appeal may be taken at once therefrom to the board of oil and gas commissioners of the district created under this chapter.

(As amended June 12, 1931.)

Operators, etc., to designate agent.

SEC. 8A. It shall be the duty of every owner or operator of any well referred to in this act to designate an agent, giving his post-office address, who resides within the county where the well is located, upon whom all orders and notices provided in this act may be served. Every person, firm, association, or corporation appointing an agent as herein provided, shall, within five days after the termination of such agency, notify the supervisor, or his deputy, in writing, of such termination, and unless operations within the district are discontinued, shall appoint a new agent upon request of the supervisor.

Unreasonable waste of gas.

SEC. 8B. The unreasonable waste of natural gas by the act, omission, sufferance, or insistance of the lessor, lessee, or operator of any land containing oil or gas, or both, whether before or after the removal of gasoline from such natural gas, is hereby declared to be opposed to the public interest and is hereby prohibited and declared to be unlawful. The blowing, release, or escape of natural gas into the air shall be prima facie evidence of unreasonable waste.

NOTE.—*Held*, that the establishment by this section of a prima facie presumption of unreasonable waste was valid: *People* v. *Associated Oil Company*, 211 Cal. 93, 294 Pac. 717, 725 (Cal. Sup. Ct. 1930), on application for writ of supersedeas; *Bandini Petroleum Co.* v. *Superior Court*, on application for writ of prohibition, 284 U. S. 8, 19, 52 Sup. Ct. 103, 76 L. Ed. 123 (1931), affg. 110 Cal. App. 123, 293 Pac. 899 (Dist. Ct. App. 1930); *People* v. *Associated Oil Co.*, 81 Cal. Dec. 468, 297 Pac. 536 (Sup. Ct. Cal. 1931), on appeal from injunction, all involving the same facts.

Cooperative development and operations.

SEC. 8C. Whenever the State oil and gas supervisor shall find that it is in the interest of the protection of oil or gas from unreasonable waste, it is declared to be lawful for the lessor, lessee, operator, or other persons, firms, and corporations owning or controlling royalty or other interests in the separate properties of the same producing or prospective oil or gas field, to enter, with the approval of the State oil and gas supervisor, into agreements for the purpose

of bringing about the cooperative development and operation of all or a part or parts of such field, or for the purpose of bringing about the development or operation of all or a part or parts of such field as a unit, or for the purpose of fixing the time, location, and manner of drilling and operating of wells for the production of oil or gas, or providing for the return of natural gas into the subsurface of the earth for the purpose of storage or the repressuring of an oil or gas field. Any such agreement shall bind the successors and assigns of the parties thereto in the land affected thereby and shall be enforceable in an action for specific performance.

Hearings on unreasonable waste of gas; supervisor's orders.

SEC. 8D. Upon complaint being made to the director of natural resources by any person operating in any oil field that there is occurring or threatened an unreasonable waste of gas in any field or fields and a petition is filed with said director requesting that a hearing be held to consider whether such waste is occurring or threatened, and it appearing to the director of natural resources that there is probable cause for such complaint, he shall order the State oil and gas supervisor to hold such a hearing and to fix a time and place therefor; such a hearing may also be ordered by the said director on the application of the State oil and gas supervisor. Notice of the time and place of said hearing shall be given by publication in a newspaper printed and published in the county in which the unreasonable waste of gas is alleged to be taking place or to be threatened. Said notice shall also specify the commonly accepted name or a general description of the field or locality in which the unreasonable waste of gas is alleged to be taking place or to be threatened. The place of hearing shall be in the county or in any of the counties in which the unreasonable waste of gas is alleged to be taking place or to be threatened. Such publication shall be daily for five days prior to the time of the hearing. The State oil and gas supervisor shall also send notice by mail to each lessor, lessee, or operator of any oil and gas well in said field so far as the same may be known to him. No failure to send such written notice shall affect the validity of the proceeding. At such hearing all persons interested shall be entitled to be heard and may present testimony either oral or written. All witnesses shall be sworn and a transcript of the proceedings shall be kept by a stenographic reporter. All the provisions of this act in reference to the subpœnaing of witnesses and the taking of depositions shall be applicable to the hearing before the State oil and gas supervisor. Upon the conclusion of said hearing the State oil and gas supervisor shall determine whether or not

there is an unreasonable waste of gas in said field, in existence or threatened, and shall also determine the extent to which the waste of gas therein occurring or threatened is unreasonable. If it shall appear that gas is being produced from any oil well or wells in quantities exceeding a reasonable proportion to the amount of oil produced from the same well or wells, even though it is shown that such excess gas is being used in the generation of light, heat, power, or other industrial purpose and that there is sufficient other gas available for such uses from other wells in the same or other fields in which the gas produced is not in excess of the amount which bears a reasonable proportion to the amount of oil produced from such other wells and that there are adequate gas-pipe-line connections between such other wells and the place of utilization of such gas the State oil and gas supervisor shall hold that such excess production of gas is unreasonable waste thereof if such holding will not cause an unreasonable waste of gas in any other field. If the waste of gas be found unreasonable an order shall be made directing that such unreasonable waste of gas shall be discontinued or refrained from to the extent stated in said order. The sale or delivery of gas to another by a lessor, lessee, or operator shall be no defense, excuse, or reason for any lessor, lessee, or operator disobeying an order of the State oil and gas supervisor directing the discontinuance or curtailment of the production of the well or wells from which said gas is being produced where such gas is being unreasonably wasted by such buyer or by the person to whom deliveries are being made. A copy of said order must be posted in a conspicuous place upon the property affected thereby, and said order shall become final five days after such posting unless appealed from as provided in section 9 hereof.

NOTE.—*Held*, that the standard of unreasonable waste fixed by this section was sufficiently definite: *People* v. *Associated Oil Company*, 211 Cal. 93, 294 Pac. 717, 724; same, 81 Cal. Dec. 468, 297 Pac. 536.

Rejection of supervisor's orders; hearing on appeal.

SEC. 9. The lessor, lessee, or any operator or any well owner or the owner of any rig, derrick, or other operating structure, or his or its local agent, must within five days from the date of the service of any order from the supervisor or his chief deputy or field deputy, other than the order contemplated by section 8d hereof, file with the supervisor or his deputy in the district where the property is located, a written statement that the order is not acceptable, and that appeal from said order is taken to the board of commissioners of said district under the provisions of this act, or comply with such order. Any lessor, lessee, or operator affected by an order made pursuant

to section 8d hereof may, within five days from the posting of the copy of such order, file with the supervisor written appeal therefrom to the board of commissioners of said district under the provisions of this act. Any such appeal shall operate as a stay of any order issued under or pursuant to the provisions of this act. Immediately upon filing of such notice of appeal the deputy supervisor of the district, as secretary ex officio of the board of oil and gas commissioners, shall call a meeting of said commissioners to hear and pass upon said appeal. No commissioner shall be disqualified from sitting or acting in any appeal from any order of the State oil and gas supervisor involving the unreasonable waste of gas by reason of the fact that he is an employee of a lessor, lessee, or operator who is interested in the oil or gas field affected by such order appealed from. The hearing upon said appeal before said district board of oil and gas commissioners shall be de novo and at such place in the district as the commissioners may designate, and within 10 days from the taking of such appeal 5 days' notice in writing shall be given to the appellant of the time and place of such hearing, and for good cause the commissioners may postpone such hearing on the application of appellant, or the State oil and gas supervisor, or the field deputy in said district, for not exceeding 5 days. The board of commissioners after hearing shall affirm, set aside, or modify said order as shall be determined by a majority of the whole board. The decision of said board shall forthwith be filed with the oil and gas supervisor and upon such filing shall be final.

District—Commissioners—Election—Recall.

SEC. 10. For the purposes of this act the State shall be divided into five districts, as follows:

District No. 1, including the counties of Los Angeles, Riverside, Orange, San Diego, Imperial, and San Bernardino.

District No. 2, the county of Ventura.

District No. 3, including the counties of Santa Barbara, San Luis Obispo, Monterey, Santa Cruz, San Benito, Santa Clara, Contra Costa, San Mateo, Alameda, and San Francisco.

District No. 4, including the counties of Tulare, Inyo, and Kern.

District No. 5, including the counties of Fresno, Madera, Kings, Mono, Mariposa, Merced, and all other counties in California not included in any of said other districts.

There shall be elected, at the times and in the manner hereinafter provided, district oil and gas commissioners for each such districts,

as follows: For district No. 1, five; for district No. 2, five; for district No. 3, five; for district No. 4, seven; for district No. 5, five.

Said district oil and gas commissioners shall be elected by vote of the companies, individuals, copartnerships, or associations, who shall have been assessed, and whose names shall appear on the last record of assessments (next preceding such election) for and on account of the fund in this act provided to be raised, within said districts, respectively, said vote to be taken at a meeting to be held in each of said districts, respectively, and on the third Monday in September of each year, such place and the time and details of such meeting to be fixed by the State oil and gas supervisor, and of which meeting at least two weeks' previous notice shall have been given by letter addressed to each of said persons, corporations, copartnerships, and associations entitled to vote as aforesaid, at his or its post-office address or principal place of business.

At said meeting of each of those entitled to vote as herein provided may be represented by one person holding the written authority of such voter to act for him at such meeting. At said meeting each voter shall be entitled to one vote for each member of the board of district oil and gas commissioners who are required to be selected for such district. In addition thereto, in each district in which five commissioners are to be elected, each voter shall be entitled, for each $100, or fraction thereof, which said voter shall have paid in accordance with his last assessment hereunder, to cast one vote for the two commissioners who are elected for three years; and in each district in which seven commissioners are to be elected, each voter shall be entitled, for each $100, or fraction thereof, which such voter shall have paid in accordance with his last assessment hereunder, to cast one vote for the three commissioners who are elected for three years. In all subsequent elections the qualifications of voters in the election of a commissioner shall be the same as in the election of the commissioner whose successor in office is being elected. Said meeting shall select by ballot, by a majority vote of the votes represented, the number of persons as hereinbefore specified to act as district oil and gas commissioners for such district. In any district entitled to seven commissioners, two shall be chosen for a term of one year, two for two years, and three for three years. In any district entitled to five commissioners, one shall be chosen for a term of one year, two for two years, and two for three years.

The chairman and secretary of the meeting shall issue a written certificate to the State oil and gas supervisor, setting forth the result of such election, and the name and address of each of the persons elected at said meeting as the district oil and gas commissioners for said district, and the term for which each has been elected. No per-

son shall be eligible as a district oil and gas commissioner who is not a resident of the district for which he is elected, nor shall any person be eligible for such position who is not actually engaged in the business of oil or gas development or production within the district. Upon receipt of the certificate so made by the chairman and secretary of any such meeting, the State oil and gas supervisor shall issue a certificate of election to the respective persons in said district named as the district oil and gas commissioners for said district, and for the periods of one, two, or three years from and after the first Monday in October, 1917, as shall be shown in such certificate, and until their respective successors shall have been elected.

Within 30 days after their appointment by the State oil and gas supervisor, the district oil and gas commissioners for each district shall meet at a time and place within the district to be designated by the State oil and gas supervisor, and shall thereupon select one of the number as chairman. The deputy supervisor of the district shall be ex officio secretary of said board and shall keep a record of its proceedings, and his office shall be the office of the commissioners.

Each board of commissioners may appoint one of its number as assistant secretary who shall, in the absence of the secretary, keep the minutes of said board, and shall perform such further secretarial duties as the board, by resolution, may direct.

In case of any litigation in which any district board of oil and gas commissioners shall be a party, such board shall have full authority to employ a competent attorney for each such litigation, and to fix his compensation, either before or after his services shall be concluded, and said compensation shall, when certified by the chairman of said board and by the State board of control, be paid from the fund created by this chapter.

Said commissioners shall serve without compensation, except their necessary traveling expenses and other actual expenses incident to their office.

In case of any hearing upon appeal before any board of district oil and gas commissioners, they shall have authority to employ a competent stenographer to take the testimony and proceedings, and in case either party shall take proceedings in the superior court, by writ of certiorari, from any order or decision of such board, it shall cause the stenographer so employed to make a full transcript of the testimony and proceedings before said board of commissioners, and three copies in addition to the original thereof. The original and one copy shall be for the use of said board of commissioners, and one copy shall be furnished to the State oil and gas supervisor, and one copy shall be furnished to the owner of the well in question. The cost and expense of employing any such stenographer, and the transcribing of his notes and making said copies, shall be part of the expenses of said commissioners, and when certified by the chairman of said board, and audited by the State board of control, shall be paid from said fund.

The traveling expenses of said commissioners, and all actual expenses incurred by or under the order of said commissioners, in the hearing and determination and carrying out of orders appealed to them, shall be certified by the deputy supervisor and the chairman of such board of supervisors, to the State supervisor, and when audited by him and by the State board of control, shall be paid from said fund.

On the third Tuesday in September of each year at an hour and place in said respective districts to be fixed by the State oil and gas supervisor, and of which notices shall have been given as hereinbefore specified, the successor of each of the district oil and gas commissioners whose term of appointment shall expire that year, shall be elected and qualified in the manner and subject to the provisions hereinbefore set forth, and the term of each shall be for a period of three years from and after the first Monday in October next succeeding.

All, either, or any of the district oil and gas commissioners elected in any district may be recalled by the votes of a majority of the qualified [voters] of the district entitled to vote as to such commissioners, respectively. In case there shall be filed in the office of the State oil and gas supervisor a written petition, signed by not less than 40 per cent of those entitled to vote as to the election of any commissioner or commissioners, asking the recall of such commissioner or commissioners, said State oil and gas supervisor shall, within 10 day thereafter, order and give notice of a special election in such district to fill the office or offices of the commissioner or commissioners named in said petition for recall; and shall cause notice to be given of said election in the manner and for the time required for regular election, and said notice shall fix the time and place of such election. At such election the commissioner or commissioners named in such petition for recall shall be voted upon as though candidates for election for the unexpired portion of the term for which they, respectively, were originally elected, and any other candidate or candidates may, at the same time, be voted upon. It shall require a majority of all the qualified [voters] entitled to vote for such commissioners, respectively, to constitute an election. In case less than a majority of all qualified votes shall be cast for any candidate, said recall shall be deemed to have failed as to the commissioner concerning whose office such vote was taken; and in case such commissioner himself shall receive a majority of the votes, said recall

shall be deemed to have failed, and in either of such cases such commissioner shall continue to serve until the expiration of his term as though no such special election had been held. But in case any person other than such commissioner shall receive a majority of the votes for such unexpired term, then such recall shall become effective and the office of the commissioner so recalled shall be vacant; and upon written certificate of such election being filed with the State oil and gas supervisor, the person so chosen and elected for such unexpired term shall become the successor of the commissioner so recalled, and a certificate of his election for such unexpired term shall be issued and transmitted to him by the State oil and gas supervisor. And like proceedings shall be had in case more than one commissioner shall be included in said petition for recall.

In all recall elections, qualifications for voters and the number of votes which they will be entitled to cast shall be the same as they, respectively, were in the election of the commissioner as to whom such recall election is being held.

In case of vacancy caused by the death, resignation, or removal from district or ceasing to be engaged in the business of development or production of oil or gas in the district as to the office of any commissioner, such vacancy shall be filled until the next annual election by the remaining commissioners of such district.

Upon any subject in which any commissioner is personally interested, or upon which any corporation, copartnership, association, or individual by whom he is employed is directly interested as a party, such commissioner shall not be entitled to sit or vote. The board of commissioners shall be entitled to call upon the supervisor for advice and written report upon any matter referred to the board of commissioners, and the supervisors shall be entitled to call meetings of the commissioners at the office of the field supervisor, upon five days' written notice, to obtain their written advice upon any matters relating to his work within their district.

Complaint, investigation, and order.

SEC. 11. Upon receipt by the supervisor or deputy supervisor of a written complaint specifically setting forth the condition complained against, signed by a person, firm, corporation, or association owning land or operating wells within a radius of 1 mile of any well or group of wells complained against, or upon the written complaint specifically setting forth the condition complained against, signed by any one of the board of commissioners for the district in which said well or group of wells complained against is situated, the supervisor must make an investigation of said well or wells and render a written report stating the work required to repair the damage complained of,

or stating that no work is required. A copy of said order must be delivered to the complainant, or if more than one, each of said complainants, and if the supervisor order the damage repaired, a copy of such order shall be delivered to each of the owners, operators, or agents having in charge the well or wells upon which the work is to be done. Said order shall contain a statement of the conditions sought to be remedied or repaired and a statement of the work required by the supervisor to repair such condition. Service of such copies shall be made by mailing to such persons at the post-office address given.

Testimony.

SEC. 12. In any proceeding before the board of commissioners as herein provided, or in any other proceeding or proceedings instituted by the supervisor for the purpose of enforcing or carrying out the provisions of this act, or for the purpose of holding an investigation to ascertain the condition of any well or wells complained of, or which in the opinion of the supervisor may reasonably be presumed to be improperly drilled, operated, maintained, or conducted, the supervisor and the chairman of the board of commissioners shall have the power to administer oaths and may apply to a judge of the superior court of the State of California, in and for the county in which said proceeding or investigation is pending, for a subpœna for witnesses to attend at said proceeding or investigation. Upon said application of said supervisor or said chairman of said board of commissioners, said judge of said superior court must issue a subpœna directing said witness to attend said proceeding or investigation: *Provided, however*, That no person shall be required to attend upon such proceeding, either with or without such books, papers, documents, or accounts unless residing within the same county or within 30 miles of the place of attendance. But the supervisor or the chairman of the board of commissioners may in such case cause the depositions of witnesses residing within or without the State to be taken in the manner prescribed by law for like depositions in civil actions in superior courts of this State, and to that end may, upon application to a judge of the superior court of the county within which said proceeding or investigation is pending, obtain a subpœna compelling the attendance of witnesses and the production of books, papers, and documents at such places as he may designate within the limits hereinbefore prescribed. Witnesses shall be entitled to receive the fees and mileage fixed by law in civil causes, payable from the fund hereinafter created. In case of failure or neglect on the part of any person to comply with any order of the supervisor as hereinbefore provided, or any subpœna, or upon the refusal of any witness to

testify to any matter regarding which he may lawfully be interrogated, or upon refusal or neglect to appear and attend at any proceeding or hearing on the day specified, after having received a written notice or not less than 10 days prior to such proceeding or hearing, or upon his failure, refusal, or neglect to produce books, papers, or documents as demanded in said order or subpœna upon such day, such failure, refusal, or neglect shall constitute a misdemeanor and each day's further failure, refusal, or neglect shall be and be deemed to be a separate and distinct offense, and it is hereby made the duty of the district attorney of the county in which said proceeding, hearing, or investigation is to be held, to prosecute all persons guilty of violating this section by continuous prosecution until such person appears or attends or produces such books, papers, or documents or complies with said subpœna or order of the supervisor or chairman of the board of commissioners.

Final decision and order by Commissioners.

SEC. 13. Within 10 days after hearing the evidence, the board of commissioners must make a written decision with respect to the order appealed from and in case the same is affirmed or modified, shall retain jurisdiction thereof until such time as the work ordered to be done by such order shall be finally completed. This written decision shall be served upon the owner or his agent and shall supersede the previous order of the supervisor. In case no written decision be made by said board of commissioners within 30 days after the date of notice by the supervisor as provided in section 10 hereof, the order of the supervisor shall be effective and subject only to review by writ of certiorari from the superior court as provided in section 14 hereof.

Repair of wells by Supervisor. Review by Superior Court.

SEC. 14. On or before 30 days after the date of serving an order of the supervisor, provided for in section 8 hereof, or in case of appeal to the board of commissioners, on or before 30 days after date of serving the decision of the board, as provided in sections 12 and 13 hereof, or in the event review be taken of the order of the board of commissioners within 10 days after affirmance of such order, the owner shall commence in good faith the word ordered and continue until completion. If the work has not been so commenced and continued to completion, the supervisor shall appoint agents as he deems necessary who shall enter the premises and perform the work. Accurate account of such expenditures shall be kept and the amount paid from the fund hereinafter created upon the warrant of the State controller. Any amount so expended shall constitute a lien against the property upon which the work is done. The decision of

the board of commissioners in such case may be reviewed by writ of certiorari from the superior court of the county in which the district is situated, if taken within 10 days after the service of the order upon said owner, operator, or agent of said owner or operator as herein provided; or within 10 days after decision by the board of commissioners upon petitions by the supervisor. Such writ shall be made returnable not later than 10 days after the issuance thereof and shall direct the district board of oil and gas commissioners to certify their record in the cause to such court. On the return day the cause shall be heard by the court unless for good cause the same be continued, but no continuance shall be permitted for a longer period than 30 days. No new or additional evidence shall be introduced in the court before the cause shall be heard upon the record of the district board of oil and gas commissioners. The review shall not be extended further than to determine whether or not: (*1*) The commission acted without or in excess of its jurisdiction; (*2*) the order, decision, or award was procured by fraud; (*3*) the order, decision, rule, or regulation is unreasonable; (*4*) the order, decision, regulation, or award is clearly unsupported by the evidence.

If no review be taken within 10 days, or if taken in case the decision of the board is affirmed, the lien upon the property shall be enforced in the same manner as the other liens on real property are enforced, and shall first be enforced against the owner of the well, against the operator, and against the personal property and fixtures used in the construction or operation thereof, and then if there be any deficiency against the land upon which the work is done, upon the request of the supervisor, the State controller must, in the manner provided in section 44 of this act, bring an action for the enforcement of said lien.

Proceedings to enjoin unreasonable waste of gas.

SEC. 14A. When the decision of the State oil and gas supervisor that there is an unreasonable waste of gas occurring or threatened shall have become final, a certified copy thereof, or, if modified by the order of the board of commissioners, then a certified copy of the order as modified, shall be filed with the director of the department of natural resources. The director, unless said order is complied with voluntarily, shall have proceedings instituted in the name of the people of the State of California to enjoin unreasonable waste of gas. Such proceedings shall be instituted in the superior court for the county in which the property where the wastage is occurring or is threatened or any part thereof may lie. There may be joined in the same proceedings any number of defendants, although their properties and interests may be severally owned and their actual or

threatened unreasonable wastage of gas may be separate and distinct: *Provided*, The actual or threatened unreasonable waste by all of the defendants is in or with reference to the same producing or prospective oil or gas field. In such suits no restraining order shall be issued ex parte, but otherwise the procedure shall be conformable with the provisions of chapter 3 of title 7 of part 2 of the Code of Civil Procedure of the State of California, and no temporary or permanent injunction issued in such proceedings shall be refused or dissolved or stayed pending appeal upon the giving of any bond or undertaking or otherwise. In such proceedings the findings of the oil and gas supervisor, unless set aside or modified by the board of commissioners, or if so modified then except to the extent so modified, shall constitute prima facie evidence of the unreasonable wastage of gas therein found to be occurring or threatened. The judgment of the court shall be appealable by any party in the same manner as other judgments rendered under said chapter.

Enjoining of unreasonable waste of gas.

SEC. 14B. Whenever it appears to the director of the department of natural resources that the owners, lessors, lessees, or operators of any well or wells producing oil and gas or oil or gas are causing or permitting an unreasonable waste of gas, he may institute, or have preceedings instituted, in the name of the people of the State of California, to enjoin such unreasonable waste of gas regardless of whether proceedings have or have not been instituted under section 8 hereof, and regardless of whether an order has or has not been made therein. Such proceedings shall be instituted in the superior court for the county in which the well or wells from which the unreasonable waste of gas is occurring or any thereof are situated. The owners, lessors, lessees, or operators causing or permitting an unreasonable waste of gas in the same oil or gas field, although their properties and interests may be separately owned and their unreasonable waste separate and distinct, may be made parties to said action. In such suits no restraining order shall be issued ex parte, but otherwise the procedure shall be governed by the provisions of chapter 3, title 7, part 2, of the Code of Civil Procedure of the State of California, and no temporary or permanent injunction issued in such proceedings shall be refused or dissolved or stayed, pending appeal upon the giving of any bond or undertaking, or otherwise.

NOTE.—The standard of "unreasonable waste" *held* sufficiently definite in *Bandini* v. *Superior Court*, 284 U. S. 18, 52 Sup. Ct. 103, 76 L. Ed. 123 (1931), affg. 110 Cal. App. 123, 293 Pac. 899 (Cal. Dist. Ct. App. 1930).

Injunction against waste of gas sustained, and this section *held* constitutional in *People* v. *Associated Oil Co.*, 211 Cal. 93, 294 Pac. 717 (1930).

Held, that the Supreme Court of California, by virtue of section 4 of article 6 of the State constitution, has power to stay a prohibitory injunction pending appeal, despite the provisions of section 14b. *People* v. *Associated Oil Co.*, 211 Cal. 93, 294 Pac. 717 (Sup. Ct. Cal., 1930).

Casing—Water shut-off.

SEC. 15. The owner or operator of any well now drilled or drilling, or that may hereafter be drilled or drilling, in the State of California on lands producing or reasonably presumed to contain petroleum or gas shall properly case such well or wells with water-tight and adequate metal casing and, in accordance with methods approved by the supervisor, or his deputy, and under his direction, shut off all water overlying and underlying oil-bearing or gas-bearing strata and prevent any water from penetrating such oil-bearing or gas-bearing strata. Such owner or operator shall likewise use every effort and endeavor to shut out from strata containing water suitable for irrigation or domestic purposes and from surface water suitable for such purposes, substances detrimental thereto, and to prevent the infiltration of such substances into the strata containing water suitable for irrigation or domestic purposes and into such surface water.

Whenever it appears to the supervisor that any water from any such well is penetrating oil-bearing or gas-bearing strata or that any such detrimental substances are infiltrating into underground or surface water suitable for irrigation or domestic purposes from any such well, he may order a shut-off test and shall designate a day upon which test shall be held. Said order shall be in written form and served upon the owner or operator of said well at least 10 days prior to the day designated in said order as the day upon which said test shall be held. Upon the receipt of such order it shall be the duty of the owner or operator to hold said test in the manner and at the time prescribed in said order.

(As amended June 12, 1931.)

Abandonment of well.

SEC. 16. It shall be the duty of the owner or operator of any well referred to in this act, before abandoning same, in accordance with methods approved by the supervisor, or his deputy, and under his direction, to shut off and exclude all water from entering oil-bearing or gas-bearing strata encountered in the well and to use every effort and endeavor to protect any underground or surface water suitable for irrigation or domestic purposes from infiltration or addition of any detrimental substances. Before any work is commenced to abandon any well, the owner or operator shall give written notice to the supervisor, or his deputy, of his intention to abandon such well and the date upon which such work of abandonment shall begin. The

notice shall be given to the supervisor, or his deputy, at least five days before such proposed abandonment and shall contain information showing the condition of the well and the proposed method of abandonment. The owner or operator shall furnish the supervisor, or his deputy, any additional information that he may request regarding the condition of the well and the proposed method of abandonment at any time between the filing of the notice of intention to abandon such well and the completion of abandonment. The supervisor, or his deputy, shall, before the proposed date of commencing work to abandon such well, furnish the owner or operator (*1*) with a written report of approval of his proposal or (*2*) a written report stating what work or tests will be necessary before approval to abandon will be given, or (*3*) a written request stating what information will be necessary for the owner or operator to furnish the supervisor, or his deputy, before approval to commence work to abandon or before approval to abandon, will be given. If the supervisor, or his deputy, shall fail within the specified time to give the owner or operator a written report or request, such failure shall be considered as an approval of the owner's or operator's proposal to abandon such well, and such proposal shall, for the purposes and intents of this act, be deemed a written report of the supervisor or his deputy. Within five days after the completion of abandonment of any well referred to in this act, the owner or operator of the well abandoned shall make, in such form as the supervisor, or his deputy, may direct, a written report, in duplicate, of all work done in connection with the abandonment. The supervisor, or his deputy, shall, within 10 days after the receipt of such written report of completion, furnish the owner or operator with a written final approval of abandonment or a written disapproval of abandonment setting forth the conditions upon which such disapproval is based. Failure to abandon in accordance with the approved method of abandonment; failure to notify the supervisor, or his deputy, to witness any and all tests provided to be witnessed by the supervisor, his deputy or his inspector, in such approved proposal; failure to furnish the supervisor, or his deputy, at his request, any information regarding the condition of the well, or any or either of such failures, shall be deemed sufficient grounds for disapproval of such abandonment.

(As amended June 12, 1931.)

Removal of rig, derrick, or other operating structure.

SEC. 16A. No person, firm, association, corporation, trust, or syndicate, whether as principal, agent, servant, employee, or otherwise, shall remove any rig, derrick, or other operating structure, or the casing or any portion thereof, from any well referred to in this act, without first giving written notice to the supervisor or his deputy

of his intention to remove said rig, derrick, structure, or casing from such well. The notice shall be given to the supervisor or his deputy at least five days before such proposed removal. The supervisor or his deputy shall, before the proposed date of removal, furnish the person, firm, association, corporation, trust, or syndicate with a written report of approval of his proposal, or a written report stating what work must be done before approval to remove will be given. If the supervisor or his deputy shall fail within the specified time to give the person, firm, association, corporation, trust, or syndicate a written report, such failure shall be considered as an approval of the person's, firm's, association's, corporation's, trust's, or syndicate's proposal to remove the rig, derrick, structure, or casing therefrom, and such proposal shall, for the purposes and intents of this act, be deemed a written report of the supervisor or his deputy. Within five days after the completion of said removal, said person, firm, association, corporation, trust, or syndicate shall make, in such form as the supervisor or his deputy may direct, a written report, in duplicate, of all work done in connection with such removal.

Commencement of drilling—Filing notice of intention, etc.

SEC. 17. The owner or operator of any well referred to in this act shall, before commencing the work of drilling an oil or gas well, file with the supervisor or his local deputy a written notice of intention to commence drilling. Such notice shall also contain the following information: (*1*) Statement of location and elevation above sea level of the floor of the proposed derrick and drill rig; (*2*) the number or other designation by which such well shall be known, which number or designation shall not be changed after filing the notice provided for in this section, without the written consent of the supervisor being obtained therefor; (*3*) the owner's or operator's estimate of the depth of the point at which water will be shut off, together with the method by which such shut-off is intended to be made and the size and weight of casing to be used; (*4*) the owner's or operator's estimate of the depth at which oil or gas producing sand or formation will be encountered.

After the completion of any well the provisions of this section shall also apply, as far as may be, to the deepening or redrilling of any well, or any operation involving the plugging of any well or any operations permanently altering in any manner the casing of any well: *And provided further*, That the number or designation by which any well heretofore drilled has been known shall not be changed without first obtaining a written consent of the supervisor. * * *

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Notification of transfer of ownership.

SEC. 17A. It shall be the duty of the owner or operator of any well referred to in this act to notify the supervisor, or his deputy, in writing, in such form as the supervisor, or his deputy, may direct, of the sale, assignment, transfer, conveyance, or exchange, by such owner or operator, of such well, and the land, owned or leased, upon which the well is located, within five days after such sale, assignment, transfer, conveyance, or exchange. Said notice shall contain the following: (*1*) The name and address of the person, firm, association, corporation, trust, or syndicate to whom such well was sold, assigned, transferred, conveyed, or exchanged; (*2*) the name and location of such well; (*3*) the date of the sale, assignment, transfer, conveyance, or exchange; (*4*) the date when possession was relinquished by the owner or operator; (*5*) a description of the land upon which such well is situated.

Every person, firm, association, corporation, trust, or syndicate acquiring the ownership of any well referred to in this act, whether by purchase, transfer, assignment, conveyance, or exchange, or otherwise, shall, within five days after acquiring such well, and the land, owned or leased, upon which the well is located, notify the supervisor, or his deputy, in writing, of such ownership. Said notice shall contain the following: (*1*) The name and address of the person, firm, association, corporation, trust, or syndicate from whom said well was acquired; (*2*) the name and location of said well; (*3*) the date of acquisition; (*4*) the date when possession was acquired; (*5*) a description of the land upon which such well is situated.

Log of well—Prospect well.

SEC. 18. It shall be the duty of the owner and operator of any well referred to in this act to keep a careful and accurate log, core record, and history of the drilling of such well, such log to show the character and depth of the formation passed through or encountered in the drilling of such well, and particularly to show the location and depth of the water-bearing strata, together with the character of the water encountered from time to time (so far as ascertained) and to show at what point such water was shut off, if at all, and if not, to so state in such log, and show completely the amounts, kinds, and size of casing used, and show the depth at which oil-bearing strata are encountered, the depth and character of same, and whether all water overlying and underlying such oil-bearing strata was successfully and permanently shut off so as to prevent the percolation or penetration of such water into such oil-bearing strata and whether strata bearing water that might be suitable for irrigation or domestic

purposes are properly protected from the infiltration or addition of detrimental substances from such well; such core record to show depth, character, and fluid content of cores obtained, so far as determined; such history to show location and amount of sidetrack casings, tools, or other material, depth and quantity of cement in cement plugs, shots of dynamite or other explosives, results of production, and other tests during drilling operations; such log shall be kept in the local office of the owner or operator, and, together with the tour reports of said owner or operator, shall be subject, during business hours, to the inspection of the supervisor, or any of his deputies, or any of the commissioners of the district, except in the case of a prospect well as hereafter defined. Upon the completion of any well or upon the suspension of operations upon any well, for a period of six months, if it be a prospect well, or for 30 days, if it be in proven territory, a copy of said log, core record, and history, in duplicate, and in such form as the supervisor may direct, shall be filed within 10 days after such completion, or after the expiration of said 30-day period, with the field supervisor, and a like copy shall be filed upon the completion of any additional work in the deepening of any such well. The owner or operator of any well referred to in this act, or his local agent, shall file with the supervisor a copy of such log, history, and core record, or any portion thereof, at any time after the commencement of the work of drilling any such well, except a prospect well, upon written request of the supervisor, or his deputy. Such request shall be signed by the supervisor, or his deputy, and served either personally upon, or by mailing a copy of said request, by registered mail, to the last known post-office address of such owner or operator or agent.

(As amended June 12, 1931.)

A well shall be deemed completed, for the purposes of this act, 30 days after the well has commenced to produce oil, water, or gas, unless drilling operations are resumed before the end of the 30-day period.

The State oil and gas supervisor shall determine and designate what wells are prospect wells within the meaning of this act, and no reports shall be required from such prospect wells until six months after the completion thereof.

The owner or operator of any well drilled previous to the enactment of this act shall furnish to the supervisor or his deputy a complete and correct log, in duplicate, and in such form as the supervisor may direct, or his deputy, of such well, so far as may be possible, together with a statement of the present condition of said well.

(As amended June 12, 1931.)

Test of shut-off.

SEC. 19. It shall be the duty of the owner or operator of any well referred to in this act to test the shut-off of water by any casing which has been cemented or landed in a stratum overlaying an oil or gas bearing stratum, with not more than 5 feet of hole open below the bottom of said casing and to notify the deputy supervisor of the time at which the owner or operator shall test the shut-off of water in any such well. Such notice shall be given at least five days before such test. The deputy supervisor or an inspector designated by the supervisor shall be present at such test, and shall render a report in writing of the result thereof to the supervisor, a duplicate of which shall be delivered to the owner. If any test shall be unsatisfactory to the supervisor he shall so notify the owner or operator in said report and shall within five days after the completion of such test, order additional tests of such work as he deems necessary to properly shut off the water in such well, and in such order shall designate a day upon which the owner or operator shall again test the shut-off of water in any such well, which day may, upon the application of the owner, be changed from time to time in the discretion of the deputy supervisor.

Production reports.

SEC. 20. It shall be the duty of every person, association, or corporation producing oil in the State of California, to file with the supervisor, on or before the tenth day of each month, for the last preceding calendar month, a statement showing amount of oil and gas produced during the period indicated from each well, together with its gravity and the amount of water produced from each well, estimated in accordance with methods approved by the supervisor, and the number of days during which fluid was produced from each well, the number of wells drilling, producing or idle, owned or operated by said person, association, or corporation; also what disposition was made of the gas produced from each well, including the names of persons, if any, to whom said gas was delivered, and such other information regarding the gas and the disposition thereof as the State oil and gas supervisor may require: *Provided*, That, upon request and satisfactory showing a longer interval may be fixed by the State oil and gas supervisor as to such reports in the case of any specific owner or operator.

This information shall be in such form as the supervisor may designate.

SEC. 20A. The State oil and gas supervisor shall require of every person, firm, association, corporation, trust, or syndicate now engaged, or who or which shall hereafter engage, in the drilling of any well referred to in this act, as principal, an indemnity bond in the sum of five thousand dollars ($5,000) for each such well being so drilled or which shall be hereafter so drilled, or a bond in the sum of twenty-five thousand dollars ($25,000) to cover all operations of such person, firm, association, corporation, trust, or syndicate in this State, executed by a reliable surety company, authorized to do business in the State of California, as surety, for the purpose of indemnifying the State of California against any and all loss, charges, or expense caused by the failure of the principal named in such bond to comply with the provisions of this act. The condition of said bond shall be stated in substantially the following language:

"If said ———, the above bounden principal, shall well and truly comply with all the provisions of the act entitled 'An act to protect the natural resources of water, petroleum, and gas from damage, waste, and destruction; relating to the creation of a division in the department of natural resources for the prevention of such damage, waste, and destruction; providing for the appointment of a State oil and gas supervisor; prescribing his duties and powers; fixing his compensation; providing for the appointment of deputies and employees; providing for the inspection of petroleum and gas wells; requiring all persons operating petroleum and gas wells to make certain reports; permitting and authorizing agreements in the interests of conservation; providing for suits by the director of the department of natural resources in the name of the people of the State of California; providing procedure for arbitration of departmental rulings; creating a fund for the purposes of the act; providing for assessment of charges to be paid by operators and providing for the collection thereof; providing for bonds required of drillers of oil and gas wells; and making an appropriation for the purposes of this act,' approved June 10, 1915, as amended, and shall obey all orders of the State oil and gas supervisor, or his deputy or deputies, lawfully made in pursuance thereof, if not appealed as provided in said act, or upon affirmance thereof, by the board of commissioners having jurisdiction thereof, if appealed thereto, and shall pay all charges, costs, and expenses incurred by such supervisor or his deputy or deputies in respect of such well or wells or the property or properties of said principal, or assessed against such well or wells or the property or properties of such principal, in pursuance of the provisions of said act, then this obligation shall be void; otherwise, it shall remain in full force and effect."

(As amended June 12, 1931.)

Penalty.

SEC. 21. Any owner or operator of any well referred to in this act, or employee thereof, who refuses to permit the supervisor or his deputy or his inspector to inspect the same, or who willfully hinders or delays the enforcement of this act, and every person, firm, association, corporation, trust, or syndicate, whether as principal, agent, servant, employee, or otherwise, violating or failing, neglecting, or refusing to comply with any of the provisions of this act, or failing or neglecting or refusing to furnish any report or record which may be required pursuant to the provisions of this act, or who willfully renders a false or fraudulent report, is guilty of a misdemeanor, and shall be punishable by a fine of not less than $100, nor more than $500, or by imprisonment in the county jail for not exceeding six months, or by both such fine and imprisonment, for each such offense.

Police power of the State.

SEC. 21A. The charges hereinafter provided for are directed to be levied by the State of California as necessary in the exercise of its police power and to provide a means by which to supervise and protect deposits of petroleum and gas within the State of California, in which deposits the people of the State of California are hereby declared to have a primary and supreme interest.

NOTE.—"This declaration is in accord with the prevailing opinion, both legislative and judicial, in the many jurisdictions where the exploitation and waste of such natural resources as gas and oil have attracted and received intelligent public consideration." *People* v. *Associated Oil Co.*, 211 Cal. 93, 294 Pac. 717, 723 (Cal. Sup. Ct. 1930).

SECS. 22–48, inclusive, relating to assessment of administrative charges, rates of charges, reports, equalization of assessments, publication of assessment notices, records of assessment, payments, liens, protests, delinquencies, dates of assessment, disposition of funds, etc., are omitted.

Recording of leases.

SEC. 49. The owner or operator of any lands or tenements subject to assessment under this act shall, within six months after this act goes into effect, file with the supervisor a certificate which shall contain the names of all the parties claiming an interest in or to said lands and full description of the property and the names of all parties in interest where such interest is held by lease, license, or assignment.

Definitions.

SEC. 50. Whenever the term "supervisor" is used in this act it shall be taken to mean the "State oil and gas supervisor," the term "oil" shall include "petroleum," the term "petroleum" shall include "oil," the term "gas" shall mean natural gas coming from the earth, the term "operator" shall mean any person, firm, or corporation drilling, maintaining, operating, pumping, or in control of a well in any territory which the supervisor determines to be oil or gas producing territory, the term "owner" shall include "operator" when any oil or gas well is operated or has been operated or is about to be operated by any person, firm, or corporation other than the owner thereof, and the term "operator" shall include "owner" when any such well is or has been or is about to be operated by or under the direction of the owner, except that all the provisions of this act relating to assessments for the purposes of this act based upon the annual production of oil or petroleum or sale of gas, as set forth in sections 22 to 45, inclusive, of this act, shall apply only to a person, firm, or corporation operating an oil or petroleum or gas well, and shall not apply to the owner of such well if some person, firm, or corporation, other than such owner, has been actually operating the well during the whole period for which such annual charge is made, but in the event that the actual operation of any such well changes hands during such period, the charge shall be apportioned upon the basis of the oil or petroleum or gas produced, and the lien provided for in section 41 of this act shall be a lien against the property of each and all such operators. Words used in this act in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; and the neuter, the masculine and feminine; the singular number includes the plural, and the plural, the singular; "writing" includes "printing" and "typewriting."

SEC. 51. Omitted; relates to appropriations.

Constitutionality.

SEC. 52. If any section, subsection, sentence, clause, or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

Act to be liberally construed.

SEC. 53. This act shall be liberally construed to meet its purposes and the director of the department of natural resources and the supervisor shall have all powers which may be necessary to carry out the purposes of this act, and the provisions of this act shall apply

to any land or wells situated within the boundaries of an incorporated city where the drilling of oil wells is now or may hereafter be prohibited until all wells thereon have been abandoned as provided in this act.

Repeal of previous law.

SEC. 54. That certain act entitled "An act to prevent injury to oil, gas, or petroleum bearing strata or formations by the penetration or infiltration of water therein," approved March 20, 1909, together with all acts amendatory thereof and supplemental thereto and all acts in conflict herewith are hereby repealed. Nothing herein shall be construed as affecting the provisions of the act of June 16, 1913, establishing a State mining bureau.

ACT OF JUNE 4, 1931

LAWS 1931, CH. 585

AN ACT to prohibit and prevent the waste of crude petroleum oil in the State of California and defining such waste, and in that behalf creating an oil conservation commission; providing for the election of the members of said commission; fixing the terms of office of the members of said commission; providing for the filling of vacancies in the membership of said commission; providing for the powers, duties, and authority of said commission and the members thereof; requiring producers of crude petroleum oil and operators of wells and owners and operators of any storage facilities of crude petroleum oil to make and file certain reports; providing for the filing and hearing of complaints concerning the waste of crude petroleum oil and for oaths, subpœnas and depositions; providing for the fixing of allowable production of crude petroleum oil for the State and for the several oil fields thereof, respectively, and for the several zones, properties, and wells in each such oil field, respectively, so as to stop such waste; providing for the enforcement of said act; providing penalties for refusing to permit the commission or its representatives to inspect any drilling or producing well or storage facilities and for failing, neglecting, or refusing to furnish any report or record or statement required by the commission and for willfully rendering or furnishing a false or fraudulent report, statement, or record, creating a fund for the purposes of said act and providing for the assessment and collection thereof.

Suspended by referendum petition prior to effective date of August 14, 1931; rejected by referendum, May 3, 1932.

ACT OF JUNE 4, 1931

LAWS 1931, CH. 586; EFFECTIVE AUGUST 14, 1931

AN ACT to protect persons and property against danger from fire and explosion in petroleum oil or gas wells by providing for the location of wells in relation to the outer boundary lines of the property, public streets, roads and highways, and other wells.

The people of the State of California do enact as follows:

[Spacing of wells required; violations declared a public nuisance.]

SECTION 1. Any well hereafter drilled for petroleum oil or gas or both, or any such well hereafter drilled and permitted to produce petroleum oil or gas or both which is located within 100 feet of an outer boundary of the parcel of land on which such well is situated or within 100 feet of a public street or road or highway dedicated prior to the commencement of drilling of such well or within 150 feet of any well being drilled, or within 150 feet of a well theretofore drilled which is producing petroleum oil or gas, or both, or within 150 feet of a well which has been drilled and is not producing petroleum oil or gas, or both, but which is capable of producing petroleum oil or gas, or both, is hereby declared a public nuisance: *Provided*, That where several contiguous parcels of land in one or different ownerships are operated as a single petroleum oil or gas lease or operating unit, the term " outer boundary line " shall mean the outer boundary line of the lands included in such lease or unit, and in determining the contiguity of any such parcels of land no street, road, or alley lying within the same shall be deemed to interrupt such contiguity: *Provided*, That where a parcel of land contains one acre or more, but is less than 250 feet in width, then there may be drilled on said parcel of land not more than one well to each acre of the area if the well is so placed as to be as far from the lateral boundary lines of said parcel of land as the configuration of the surface and the existing improvements thereon will permit, and provided for the purposes of this act an alley which intersects or lies within any block or other subdivision unit shall not be deemed to constitute a public street or road.

Each day in which the drilling of such well is carried on or in which such well is permitted to produce petroleum oil or gas, or both, shall be deemed a separate nuisance.

The provisions of this act shall not apply to any field producing petroleum oil or gas on the date this act becomes effective.

If any section, subsection, sentence, proviso, clause, or phrase of this act is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act and each section, subsection, sentence, proviso, clause, and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, provisos, clauses, or phrases be declared unconstitutional.

(Approved June 4, 1931.)

ANNOTATIONS TO OMITTED STATUTES:

Stat. 1921, c. 303, p. 404; Stat. 1923, c. 285, p. 593, authorizing the State to issue permits for oil prospecting on tidelands, sustained in *Boone* v. *Kingsbury*, 206 Cal. 148, 181, 273 Pac. 797.

Pacific Palisades Association v. *Huntington Beach*, 196 Cal. 211, 237 Pac. 538, 40 A. L. R. 782 (1925), held unreasonable and invalid an ordinance which zoned the city so as to prohibit drilling in a sparsely settled area, while permitting it in heavily settled districts.

A city ordinance of Los Angeles zoning the city so as to render illegal drilling operations in certain areas, although under a previous ordinance such operations had been legal and the plaintiff's lessee had spent substantial sums in drilling, was sustained in *Marblehead Land Co.* v. *City of Los Angeles*, 47 Fed. (2d) 528 (C. C. A. 9th Cir., 1931).

In *Texas Co.* v. *Vedder* (Superior Court, Los Angeles County, 1930; unreported) a lessee's refusal to produce more oil than permitted by a state-wide voluntary proration agreement was held not to subject the lease to forfeiture, nor to be in violation of the State antitrust laws (Cartwright Act).

STATE OF COLORADO

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1921:	*Comp. Laws, 1921, ch. 55, p. 1086*	85
1923:	*Sess. Laws, 1923.*	88
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REGULATIONS—*Printed 1930.*

SEC. 3641. It shall be the duty of the owner, owners, or persons in charge of any bore hole which shall penetrate any workable coal seam or any accessible or inaccessible coal mine excavation, to notify the State oil inspector of the location of such bore hole by designating the particular 5-acre subdivision of the land section on which such bore hole is situated, and the depth and thickness of each and every workable coal seam or accessible or inaccessible coal mine excavation penetrated by such bore hole, and on receipt of such notification the State oil inspector shall at once notify the State coal mine inspector.

NOTE.—See section 3651.

[*Escape of gas or oil unlawful.*]

SEC. 3642. It shall be unlawful for any person or corporation having possession or control of any natural gas or oil well, whether as contractor, owner, lessee, agent, or manager to allow or permit the flow of gas or oil, from any such well, to escape into the open air, but shall use due diligence to confine such gas or oil in such well or pipes or other safe and proper receptacles, or shall put the same to some beneficial use.

NOTE.—Substantially (except for period of time specified) like the Indiana statute (Acts 1893, p. 300) held valid in *Ohio Oil Co.* v. *Indiana*, 177 U. S. 190, 20 Sup. Ct. 576, 44 L. Ed. 729 (1900).

SECS. 3643–4. Repealed April 5, 1929; S. L. 1929, ch. 137, p. 483.

[*Spacing from shafts and mine properties.*]

SEC. 3645. No bore hole penetrating a gas-bearing or oil-bearing formation shall be located within 200 feet of a shaft, or entrance, to a coal mine not definitely abandoned or sealed; nor shall such bore hole be located within 100 feet of any mine-shaft house, mine-boiler house, mine-engine house, or mine fan; and the location of any proposed bore hole must insure that when drilled it will be at least 15 feet from any mine haulage or airway.

NOTE.—See section 3651.

[*Protection of coal from water.*]

SEC. 3646. Any bore hole penetrating any workable seam of coal shall be cased by the owner of such bore hole with a suitable casing, conductor, or drive pipe, so as to shut off all surface water from entering said workable coal seam.

NOTE.—See section 3651.

[*Protection of coal from oil or gas.*]

SEC. 3647. When bore holes for gas or oil are drilled in the coal measures and pass through workable seams, if gas or oil is encountered in such bore hole, the coal seams or worked-out coal seams shall be sufficiently protected by casing so that the gas or oil shall not come in contact with the coal seams or enter the excavation of worked-out seams.

NOTE.—See section 3651.

[*Protection of lower formations.*]

SEC. 3648. When water-bearing formation is encountered in the drilling of any bore hole for natural gas or oil, casing shall be set upon the next formation encountered which is of such a nature that it will sustain the casing and exclude all water from the lower bore hole.

NOTE.—See section 3651.

[*Reports of drilling operations.*]

SEC. 3649. When a bore hole has been drilled and completed, and placed in operation for the utilization of natural gas or oil, the owner of such well shall file with the inspector a statement of the total depth of the hole, the sizes and lengths of casings used and remaining in the hole, the depth and thickness of coal seams penetrated, and whether oil, gas, or water was obtained.

The information thus given to the inspector shall not be deemed to be public record, and shall be given out by the inspector or his deputies only upon the written consent of the person, persons, or corporation rendering such statement.

NOTE.—See section 3651.

[*Notice of abandonment.*]

SEC. 3650. When any oil or gas well is to be abandoned, the owner shall notify the inspector, in writing, of such intent to abandon, and shall proceed with the plugging as provided herein.

[*Limitation on sections 3641, 3645, 3646, 3647, 3648, 3649.*]

SEC. 3651. Sections 3641, 3645, 3646, 3647, 3648, and 3649 apply only to wells or bore holes which may be drilled through workable coal seams.

[*State inspector's reports.*]

SEC. 3652. On the first Monday of February of each year the State inspector shall make and deliver to the governor of the State an annual report of the inspections made by him or his deputies for the preceding year.

[*Removal of inspector by governor.*]

SEC. 3653. The governor shall have the power to remove from office any inspector who is incompetent or unfaithful in the discharge of his official duty, or who, having knowledge of the violation of any of the provisions of this act, shall neglect or refuse to prosecute the offender.

[*Enforcement by district attorneys.*]

SEC. 3654. It shall be the duty of the district attorneys, in their districts, and the attorney general, in cases where the district attorney refuses to act, to enforce the provisions of this act by appropriate actions in courts of competent jurisdiction.

NOTE.—Compare with Laws 1927, chapter 138, section 4.

[*Qualifications of inspector.*]

SEC. 3655. The governor shall appoint a skilled and suitable person, who has been qualified by the State civil-service examination and who is not interested in the manufacture or dealing in oils, as State inspector of oils.

[*Oaths and bonds; inspector and deputies.*]

SEC. 3656. Any person appointed State inspector of oils or deputy State inspector of oils shall, before entering on the duties of the office, take oath or affirmation as prescribed by the constitution of the State and shall file the same in the office of the secretary of state.

The State inspector shall execute a bond to the State of Colorado in the sum of $10,000, which surety shall be approved by the secretary of state, conditioned upon the faithful performance of the duties imposed upon him in the act, and the bond shall be for the use of all persons in any way injured or aggrieved by the acts or neglects of said inspector.

The deputy inspectors shall execute a bond to the State of Colorado in the sum of $5,000, which surety shall be approved by the judge of the district court in the county where the said deputy is located, and bond shall also be for the use of all persons in any way aggrieved or injured by the acts of such deputy inspector.

* * * * * * *

SEC. 3658. Amended April 24, 1925, S. B. No. 435, ch. 139, p. 388, S. L. 1925.

[*Penalties.*]

SEC. 3659. Any violation of any of the provisions of this act shall be deemed a misdemeanor and shall be punished by a fine of not more than $500, or by imprisonment of not more than six months in the county jail, or by both such fine and imprisonment.

In all cases where fines are collected, one-half the amount shall be paid to the State treasurer and be placed to the credit of the oil inspection department.

SECS. 3660–3663. Repealed April 30, 1923; ch. 153, p. 474.

SESSION LAWS, 1923

H. B. 423, ch. 153, p. 474. Amended by S. L. 1927; repealed by S. L. 1929, ch. 139, p. 488.

SESSION LAWS, 1925

CHAPTER 139

[*Sec. 3658 of Comp. Laws amended.*]

SECTION 1. That section 3658 of the Compiled Laws of Colorado, 1921, as amended by section 1 of chapter 152, Session Laws of Colorado, 1923, be and the same is hereby amended to read as follows:

"SEC. 3658. Out of the fees and emoluments of his office, the State inspector of oils shall receive a salary of $3,000 per year, together with actual and necessary expenses of the office; one deputy shall receive a salary of not to exceed $2,400 per year, and the other deputies shall receive a salary of not to exceed $1,800 per year together with actual necessary traveling and laboratory expenses. Out of such fees shall also be paid the expenses incurred in making such geological examinations of State oil lands as shall be authorized by the governor, but not to exceed $8,000 per annum. The above salaries and expenses shall be paid monthly on a warrant signed by the governor. The State inspector of oil shall furnish to the attorney general on or before the tenth day of each calendar month a statement showing all unpaid taxes which were delinquent on the first day of the preceding calendar month."

SECS. 2, 3. Emergency clauses: Omitted.

SESSION LAWS, 1927

CHAPTER 138

AN ACT to promote the conservation of gas, creating a gas conservation commission with authority to adopt and enforce rules and regulations to prevent the waste of gas and imposing penalties for such waste.

Be it enacted by the GENERAL ASSEMBLY of the State of Colorado:

[*Unavoidable (sic) waste or wasteful use of gas prohibited.*]

SECTION 1. The unavoidable waste or wasteful use of any gas hereafter produced in the State of Colorado, whether the same be natural gas from gas wells or casing-head gas from oil wells, is hereby prohibited and declared to be unlawful.

[*Gas conservation commission.*]

SEC. 2. The governor of the State of Colorado is hereby authorized and directed within 30 days after this act becomes effective to appoint a gas conservation commission, consisting of three men, each of whom shall be over 30 years of age and shall have had at least five years' experience in the business of producing oil or gas. The State oil inspector shall be an ex officio member of such commission and shall, through himself and his deputies, comply with and enforce such rules and regulations to prevent the waste of gas as said commission may from time to time adopt and promulgate. One of the members originally appointed to said commission shall serve for a term of two years from and after his appointment, one of the members for a term of four years, and one of the members for a term of six years. All members of said commission, after those first appointed, except said State oil inspector and such as may be appointed to serve for unexpired terms, shall serve for six years. The governor shall by appointment fill any vacancies in said commission caused by death, resignation, removal for cause or otherwise, but any such interim appointee shall serve for the unexpired term only of his predecessor. The members of the commission, other than said State oil inspector, shall serve without compensation,

and said State oil inspector shall receive no additional compensation for the performance of any duties imposed upon him by this act.

[*Regulations; findings prima facie evidence.*]

SEC. 3. Such gas conservation commission is hereby authorized and empowered to adopt such reasonable rules and regulations as may be proper for the conservation of the gas resources of the State and the prevention of gas waste, and the findings of such commission, after an investigation and hearing, that any corporation, association, partnership, or individual has violated any such rule or regulation shall be prima facie evidence of the violation of this act in any civil or criminal proceeding arising hereunder.

[*Penalties—Suits by commission—Exception of State lands from act.*]

SEC. 4. Any violation of this act is hereby declared to be a misdemeanor, punishable by fine of not less than $50 and not more than $100, and each day's violation hereof shall constitute a separate offense. It shall be the duty of said State oil inspector, under the direction and control of said gas conservation commission, as well as of the attorney general or the district attorney of any county, to initiate proceedings for the punishment of any violation of this act. Said conservation commission, on behalf of and in the name of the State or any private party claiming to be injured by any violation of this act or any rules or regulations promulgated hereunder, may sue in any court of competent jurisdiction for an injunction and pursue such other civil remedies as are available for any violation of this act: *Provided, however*, That since the control of all lands heretofore or which may be hereafter granted to the State by the Federal Government is by the State constitution expressly vested in the State board of land commissioners, no provision of this act shall apply to any such lands so long as the title thereto or to the minerals therein contained shall remain in this State.

[*Repeal.*]

SEC. 5. All acts or parts of acts inconsistent or in conflict herewith are hereby repealed.

[*Emergency.*]

SEC. 6. In the opinion of the general assembly an emergency exists, and this act shall take effect and be in force upon and after its passage.

SESSION LAWS, 1927

CHAPTER 139

AN ACT relating to the drilling of wells for the production of oil or gas.

Be it enacted by the GENERAL ASSEMBLY of the State of Colorado:

[*Logs—Filing—Penalties.*]

SECTION 1. That all individuals, firms, associations, or corporations drilling for oil or gas in the State of Colorado are hereby required to keep an accurate and complete log of all such wells so drilled by them, and they shall record in such log a statement and description of each of the different formations penetrated by such well, and the depth and thickness of each formation penetrated by such well, and within 60 days after abandonment of said well and the lease covering the land upon which said well is located, or within 60 days after the surrender in any manner of the lease covering the land whereon said well is located, said individual, firm, association, or corporation so drilling such well shall cause to be filed with the secretary of state and with the department of geology of the University of Colorado, and with the school of mines, such complete log of such well showing in detail and with accuracy the matters above set forth, and such log shall be accompanied by an affidavit to the correctness and accuracy thereof by the person or firm, member of firm or association, or by any officer of the corporation, as the case may be, that drilled such well. Any person, whether acting in his own behalf or as a member of any firm or association, or as the agent or officer of any corporation, or any corporation, which shall fail or neglect to comply with the requirements of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than $100 nor more than $1,000, in the discretion of the court.

SEC. 2. All laws or parts of laws in conflict with this law are hereby repealed.

SESSION LAWS, 1927

CHAPTER 140

Repealed May 1, 1929, by S. L. 1929, ch. 139, p. 488.

SESSION LAWS, 1929

CHAPTER 137

AN ACT entitled an act to provide for abandoning and plugging wells drilled for oil and gas and creating a commission to prescribe and enforce rules and regulations therefor; to prescribe penalties for the violation thereof, and to repeal any and all acts or parts of acts in conflict therewith.

Be it enacted by the GENERAL ASSEMBLY of the State of Colorado:

[*Plugging.*]

SECTION 1. Whenever any well shall have been sunk on privately owned lands for the purpose of obtaining natural gas or oil, or exploring for the same, and shall be abandoned or cease to be operated for utilizing the flow of gas or oil therefrom, it shall be the duty of any person or corporation having custody or control of such well at the time of such abandonment, and also of the owner or owners of the land whereon such well is situated, when so required by the gas conservation commission hereinafter mentioned, to properly and securely stop and plug the same so as to prevent so far as possible the flow of oil, gas, or water through said well from one stratum to another, or to the surface of the ground.

[*Regulations: promulgation.*]

SEC. 2. The gas conservation commission created by chapter 138, Session Laws of Colorado, 1927, is hereby authorized and directed to prescribe rules and regulations for the proper abandonment and plugging of wells drilled for oil and gas, and to change such rules and regulations from time to time to the end that such rules and regulations shall conform to the most approved and up-to-date methods of oil field practice, and to determine when, in what manner, and under what circumstances, such wells shall be required to be plugged.

[*Regulations: distribution.*]

SEC. 3. The State oil inspector shall furnish copies of such rules and regulations from time to time to all oil and gas operators and operating companies known to him to be operating in the State of Colorado, and copies of such regulations shall be at all times available at the office of the oil and gas inspector to be furnished to operators on request.

[*Report of abandonment.*]

SEC. 4. Upon the abandonment and plugging of any well drilled for oil and gas within the State of Colorado, the operator engaged

in such operations shall within 30 days thereafter file an affidavit at the office of the State oil inspector subscribed by two persons actually engaged in the work of abandonment of such well, showing in detail the method of abandonment which shall be in accordance with the then existing regulations.

[*Penalties.*]

SEC. 5. Any violation of this act is hereby declared to be a misdemeanor punishable by fine of not less than $50 and not more than $1,000, or by imprisonment of not more than six months in the county jail, or by both such fine and imprisonment. It shall be the duty of said State oil inspector under the direction and control of said gas conservation commission as well as the attorney general or the district attorney of any county to initiate proceedings for the punishment of any violation of this act. The penalty herein prescribed shall not be construed to exclude the right of the State or of any private property owners to maintain any civil action to redress any injury caused by the violation or threatened violation of this act.

[*Repeal of Comp. Laws 1921, sec. 3643, 3644.*]

SEC. 6. Sections 3643 and 3644 of the Compiled Laws of Colorado, 1921, are hereby expressly repealed and all acts and parts of acts in conflict with the provisions of this act are hereby expressly repealed.

SUMMARY OF REGULATIONS

PUBLISHED 1930

Modeled in general on operating regulations of the United States; not reprinted here.

STATE OF ILLINOIS

LEGISLATION— PAGE

1925: Smith-Hurd, Rev. Stats., 1925, ch. 93, secs. 85–91 97

REGULATIONS—*None.*

STATE OF ILLINOIS[5]

SMITH-HURD ILLINOIS REVISED STATUTES, 1925

CH. 93, SECS. 85–91

AN ACT in relation to the sinking, filling, and operating of wells for oil, gas, water, or other purposes. (Act approved June 7, 1911, amending act of May 16, 1905; amended in turn by act of June 27, 1923. See Laws, 1905, p. 326; Laws, 1911, p. 426; Laws, 1923, p. 462.)

85. Distance of well from mine opening.

SECTION 1. No oil or gas well shall be drilled hereafter nearer than 250 feet to any opening to a mine used as a means of ingress or egress for the persons employed therein or which is used as an air shaft.

86. Statement and map of well through coal seam.

SEC. 2. It shall be the duty of any person, firm, or corporation having the custody or control of any well drilled for gas, oil, water, or for any other purpose, and of the owner of the land in which such well is drilled, when the drill hole penetrates a coal seam 4 feet or more in thickness and more than 100 feet below the surface, to file in the office of the recorder of the county in which said well is drilled and in the office of the department of mines and minerals within 15 days after completing said well a statement and map giving the location and depth of every well so drilled. The map filed shall be an accurate survey locating the well with reference to section corners or known landmarks, and shall be made and certified to by the county or some other competent surveyor. The county recorder shall file and enter and index same in the records of his office relating to the titles to real property. (As amended by act approved June 27, 1923. Laws, 1923, p. 462.)

87. Abandoned well—Treatment prescribed.

SEC. 3. Before the casing shall be drawn from any well for the purpose of abandonment thereof, which has been drilled into any gas or oil bearing rock, it shall be the duty of any person, firm, or corpo-

[5] No provision for a supervising commission or office appears to have been made by the State of Illinois as late as December 1, 1932. By the terms of the act approved June 27, 1923 (Laws, 1923, p. 462), provision is made for filing maps of oil and gas wells in the office of the department of mines and minerals.

ration having the custody or control of such well at the time of such abandonment, and also the owner or owners of the land wherein such well is situated, to properly and securely stop and plug the same in the following manner: Such hole first be solidly filled from the bottom thereof to a point at least 20 feet above such gas or oil bearing rock with sand, gravel, or pulverized rock, immediately on the top of which filling shall be seated a dry wood plug not less than 2 feet in length, having a diameter of not less than one-fourth of an inch less than the inside diameter of the casing in such well. And above such wooden plug such well shall be solidly filled for at least 25 feet with the above-mentioned filling material, immediately above which shall be seated another wood plug of the same kind and size as above provided, and such well shall again be solidly filled for at least 25 feet above such plug with such filling material. After the casing has been drawn from such well there shall immediately be seated at the point where such casing was seated a cast-iron ball or tapered-wood plug at least 2 feet in length, the diameter of which ball or the top of which wood plug shall be greater than that of the hole below the point where such casing was seated, and above such ball or plug such well shall be solidly filled to top of well with the aforesaid material. Before the casing shall be drawn, for the purpose of abandonment, from any well drilled for gas, oil, water, or any other object, and penetrating a coal seam, of four feet or more in thickness and more than 100 feet below the surface, the hole shall be plugged in the following manner: Such hole shall first be solidly filled from the bottom thereof to a point 25 feet below the bottom of the coal seam with sand, gravel, or pulverized rock, immediately on top of which shall be seated a dry wood plug not less than 2 feet in length and having a diameter not less than one-fourth of an inch less than the inside diameter of the casing. The hole shall then be filled for a distance of 50 feet with a mixture of concrete, consisting of sand and broken rock not greater than one-half inch in diameter or with clean sand and gravel with not less than one-fifth in volume of cement to be mixed and placed in accordance with the best practice. If possible the hole shall be entirely free from water when the concrete is placed. The casing shall be withdrawn as the concrete work proceeds. The work herein required shall be done under the supervision of the county mine inspector, or if there is no mine inspector then some person designated by the county board. (As amended by act approved June 27, 1923. Laws, 1923, p. 462.)

88. Affidavit filed with recorder.

SEC. 4. The person, firm, or corporation owning or having control or custody of any such well, or the land in which any such well is situated, shall file or cause to be filed in the office of the recorder of

the county in which any such well is located, within 15 days after the same has been plugged, as provided in section 3, the affidavit of the county mine inspector or person designated to supervise the work and the owner of the land in which the well is situated, which affidavit shall be recorded in the record books in the office of the recorder of such county, and shall set out in detail the manner in which such well was plugged, the depth of each such wood plugs and iron ball below the surface of the ground, and the record of such affidavit shall be prima facie evidence in any court of a compliance with the provisions of this act. (As amended by act approved June 27, 1923. Laws, 1923, p. 462.)

89. Provides for casing.

SEC. 5. It shall be the duty of any person, firm, or corporation sinking a well in any oil or gas bearing rock, or having sunk such well and maintaining the same, to case off and keep cased off all fresh water from such well.

90. Violations—Penalties.

SEC. 6. Any person, firm, or corporation violating the provisions of section 1 or failing to comply with the provisions of section 2 of this act, or who shall fail or refuse to plug a well in the time and manner provided in section 3 of this act, or shall fail or neglect to secure and file in the proper recorder's office the affidavit provided for and required in section 4 of this act, or shall fail and neglect to properly case off fresh water from such well and keep the same cased off while said well is maintained, as provided in section 5 of this act, shall be liable to a penalty of $100 for each and every violation thereof, and the further sum of $100 for each 10 days during which such violation shall continue, and all such penalties shall be recoverable in a civil action brought in any court of competent jurisdiction in any county in which said violation occurred, brought in the name of the State of Illinois on the relation of such county, and for the use and benefit of such county, and in all such cases, if there be recovery by the State, it shall recover in addition to such penalties a reasonable attorney's fee.

STATE OF INDIANA

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STATE OF INDIANA

BURNS' ANNOTATED INDIANA STATUTES, 1926

VOL. 2, CH. 23, TITLE, "CONSERVATION DEPARTMENT"

Sec. 4725. Department of conservation.

There shall be and hereby is created an administrative department to be known as the department of conservation. (Acts, 1919, p. 375; in force April 1, 1919.)

Sec. 4726. Conservation commission, members, terms, pay.

The powers and duties of the department of conservation shall be vested in a conservation commission, which shall consist of four members, who shall be appointed by the governor, and not more than two of whom shall be adherents of the same political party. Upon the taking effect of this act, the governor shall appoint the four members of the conservation commission, one of whom shall be designated to hold office for one year, one for two years, one for three years, and one for four years, and until their successors have been appointed and qualified: *Provided*, That at least one member of such commission may be appointed by the governor from a list of persons nominated by the Indiana Academy of Science, and the successors of such appointee may, in like manner, be so nominated and appointed. At the expiration of the term of office of each of the commissioners so appointed, and every four years thereafter, the governor shall appoint a successor to hold office for the term of four years, and until his successor has been appointed and qualified. The governor shall fill any vacancy occurring in the membership of the commission and may remove any member of the commission, after a hearing, for cause. The members of the commission shall serve without compensation, except when they are required to be absent from their homes on business of the commission, during which time they shall each receive the sum of $10 per day for the days actually and necessarily spent on duty and actual and necessary traveling and other expenses incurred in the performance of official duties. (Acts, 1919, p. 375; as amended, Acts, 1921, p. 439.)

Sec. 4727. Director, salary.

Omitted.

Sec. 4728. Duties of director, fish and game wardens.

Omitted.

Sec. 4729. Chiefs of divisions and assistants.

Omitted.

Sec. 4730. Officers of commission, rules and regulations.

Immediately upon the taking effect of this act and the appointment of the commission, and anually thereafter, the commission shall meet and organize by the election of one of its members as chairman, who shall hold office for one year. Three members shall constitute a quorum to do business. The commission shall have power to make rules and regulations for the conduct of its meetings and, upon the recommendation of the director of the department, for the conduct of the work of the department and its several divisions. The commission may make rules and regulations authorized by this act and such others as may be necessary, in their judgment, to carry out its provisions; and such rules and regulations, when approved by the governor and promulgated as hereinafter provided, shall have the force and effect of law; and any person, firm, or corporation who shall violate any of the provisions of such rules or regulations shall be subject to a fine of not less than $10 nor more than $300 for each offense, to which may be added imprisonment in the county jail for not less than 30 days nor more than 6 months. In issuing such rules, the conservation commission shall have full authority to prescribe reasonable fees for any inspection or other like service without the purview of this act and performed by the commission or any of its assistants or employees. All such rules and regulations issued by the conservation commission shall bear the seal of the commission and be attested by the director and signed by the governor, and shall state specifically therein the date on which such rules and regulations shall be promulgated by the conservation commission by publishing the same in pamphlet or leaf form and supplying at least 12 copies thereof to the clerk of the circuit court of every county in the State, not less than 10 days prior to the date on which such rules and regulations will become effective.

Sec. 4731. Powers of the Department.

The department of conservation shall have power to investigate, compile, and disseminate information and make recommendations concerning the natural resources of the State and their conservation; including the drainage and reclamation of lands; flood prevention; development of water power; culture and preservation of forests; fish and game; the preservation of soils; the prevention of

the waste [of] mineral resources; the prevention and methods of control or [of] plant diseases, infections, and pests; the prevention and methods of control of bee diseases and the increased production of honey and the use of bee appliances; and such other questions or subjects as may be contemplated in this act; and shall have power to cooperate with the appropriate departments of the Federal Government in conducting topographical and other surveys, experiments or work of joint interest to the State and the Federal Government. (Acts, 1919, p. 375.)

Sec. 4732. Cooperation with public or private institutions.

Omitted.

Sec. 4733. Power to administer oaths and examine records.

Omitted.

Sec. 4734. Report to the governor.

Omitted.

Sec. 4735. Publication of information.

Omitted.

Sec. 4736. Divisions of department of conservation.

Omitted.

Sec. 4737. Chiefs to have supervision and management [over their divisions.]

Omitted.

Sec. 4738. Power to execute and serve warrants and processes.

Omitted.

Sec. 4739. Division of geology.

The department of conservation shall have the following rights, powers, and duties:

1. It shall continue the geological, scientific, and topographical survey of this State and the work of discovering, developing, and preserving its natural resources.

2. It shall recommend and secure the enforcement of laws for the conservation and development of the natural resources of the State.

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(Subd. 3, 4, omitted; relate to dissemination of information and change of "State geological cabinet.")

Secs. 4740–4747.

Omitted; relate to divisions of entomology, forestry, lands and waters, fish and game, engineering; appropriations; revolving fund.

Sec. 4748. Power of eminent domain.

The conservation commission is hereby endowed with the right and power of eminent domain and is hereby authorized to exercise the right and power of eminent domain in so far as the same may be necessary or proper for the carrying out of the provisions of this act. Whenever the conservation commission shall deem it necessary or proper to appropriate any real estate or acquire any right for the carrying out of the provisions of this act, the conservation commission shall adopt an appropriate resolution setting forth a specific description of the real estate or right deemed by the conservation commission necessary or proper for the carrying out of the provisions of this act, the purpose for which the real estate or right is to be used, and such other facts as are necessary under the law of this State for the proper preparation of a complaint for the condemnation of the said real estate or right, and shall refer such resolution to the attorney general of this State. Thereupon the attorney general shall commence in the proper court an action in the name of the State of Indiana on the relation of the conservation commission for the condemnation of the said real estate or right, and shall proceed under the laws of this State providing for condemnation under the power of eminent domain to condemn the said real estate or right for the carrying out of the provisions of this act.

All expense incurred in conducting condemnation proceedings and in acquiring any real estate or rights by condemnation for any of the purposes of this act shall be paid out of any funds appropriated or otherwise available for the use of the department of conservation, and not otherwise expended in the work of the conservation department, as herein provided. (Ibid.)

Sec. 4749. Rights and powers conferred.

All the rights, powers, and duties conferred by law upon the natural gas supervisor, the State geologist, the State board of forestry, the State forester, the superintendent of State forest reserves, the State entomologist, the commissioner of fisheries and game, and the State inspector of apiaries, in so far as such rights, powers, and duties are not inconsistent with the provisions of this act, are hereby transferred to and conferred upon the department of conservation,

and the office of State geologist, the department of geology and natural resources, the office of supervisor of natural gas, the State board of forestry, the office of State forester, the office of superintendent of State forest reserves, the office of State entomologist, the office of commissioner of fisheries and game, and the office of State inspector of apiaries, as now provided by law, are hereby abolished.

All work or proceedings begun under the provisions of any law which the conservation commission is by this act empowered to execute and administer shall be concluded and determined by the conservation commission in accordance with the provisions of such law, and nothing contained in this act shall be construed to affect pending litigation growing out of, connected with, or based on proceedings had under such laws. (Ibid. See note below.)

NOTE.—While the office of natural gas inspector was abolished by the above section of the act of April 1, 1919, the duties of the office remained, the conservation commission being charged with their enforcement; accordingly, such duties appear elsewhere under the old heading, "Natural gas supervisor." See section 4797 and succeeding sections.

Sec. 4750. Penalty for obstructing or hindering commission.

Any person who shall obstruct or hinder any member of the conservation commission or the director or any chief or regularly appointed assistant or employee in the lawful discharge of his duties as prescribed in this act shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined such an amount as the court, in its discretion, shall determine, not to exceed $300. Any person who shall violate any provision of this act where a specific penalty is not provided shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not less than such an amount as the court, in its discretion, shall determine, not to exceed $50.

Sec. 4751. Attorney general and prosecuting attorneys; concurrent power.

The attorney general is hereby given concurrent power with the several prosecuting attorneys of the State of Indiana, and it is made the duty of both the attorney general and the several prosecuting attorneys of Indiana to attend to a rigid enforcement of all of the provisions of this act.

Sec. 4752. Constitutionality of the act.

If the courts should declare any section or provision of this act unconstitutional and void, then such decision shall affect only the

section or provision so declared unconstitutional and void and shall not affect the validity of any other section or provision of this act. (Ibid.)

Sec. 4753. Date act is effective.

This act shall take effect and be in force from and after April 1, 1919. (Ibid.)

Sec. 4794. Mineral resources; information refused; penalty.

It shall be the duty of the director of the department of geology and natural resources of Indiana, otherwise known as "the State geologist," to collect such statistical details relating to the mineral and natural resources of the State as, in his opinion, shall be of value for his annual report or bulletins, and any county, municipal, or township officer, corporation, firm, individual, or association doing business within this State, who shall neglect for 30 days to answer questions concerning such resources by circular or upon personal application, shall be liable to a penalty of $5, to be collected by the order of the director of said department in an action wherein the State of Indiana shall be plaintiff. The fines arising under this act may be recovered in any court of competent jurisdiction by information or complaint of the attorney general or prosecuting attorney, and the same shall accrue to the State, and be paid into the treasury thereof.

Secs. 4795, 4796.

Omitted; relate to bulletins, museum.

ARTICLE 10: NATURAL GAS SUPERVISOR

Sec. 4797. Duties of natural gas supervisor.

The natural gas supervisor shall make personal inspection of all the gas wells of the State, so far as practicable, and shall see that every precaution is taken to insure the health and safety of workmen engaged in opening gas wells and laying mains and pipes, and of those who, in any manner, use gas for mechanical, manufacturing, domestic, or other purposes. He shall see that all the provisions of law pertaining to the drilling of wells and the piping and consumption of natural gas are faithfully carried out, and that the penalties of law are strictly enforced against any person or persons who violate the same, and promptly report all violations

of law to the attorney general of the State. (Acts, 1891; in force Mar. 9, 1891.)

NOTE.—While the office of natural gas supervisor was abolished by the act of April 1, 1919, the duties remained, being transferred to the conservation commission. Such duties are accordingly here set forth.

Sec. 4798. Additional duties.

It shall be the duty of the natural gas supervisor to inspect all natural gas pipe lines in this State at least once in each year, and as often as may be necessary, or whenever he may be directed by the State geologist; and he shall have the power to condemn any pipes or portions of lines that he may deem unsafe or dangerous to life or property. And any person or persons using, or causing to be used, any pipe line or portions thereof after the same have been condemned, shall be guilty of a misdemeanor, and upon conviction shall be fined in any court having jurisdiction of misdemeanors, in any sum not exceeding $100; and any person or persons in this State owning natural gas wells or natural gas pipe lines, or who controls the same, who refuses to allow the same to be inspected by the natural gas supervisor, upon conviction shall be fined in any sum not exceeding $50: *Provided further*, That whenever any responsible person shall file with such gas supervisor an affidavit charging the owner or owners of such gas plant or wells, or any person using the same, or their employee, with the violation of any of the laws regulating the use of natural gas, and particularly specifying the violation complained of, it shall be the duty of such supervisor to examine and inquire into the alleged violation of the law as set forth in the affidavit, and if he finds the facts as charged, it shall be his duty to see that the law is complied with. (Ibid.)

Sec. 4799. Leakage, repairing.

It shall be and is hereby made the duty of the natural gas supervisor of the State of Indiana, upon the discovery of any leak in any pipe line for transportation of natural gas, or in any machinery, apparatus, appliance, or device used in the regulation or distribution thereof, to forthwith notify, in writing, the owner or superintendent of said pipe line, machinery, apparatus, appliance, or device to have the same repaired within two days from the time of receipt of said notice. In case such leak has not been repaired within two days from the time of receiving such notice, it shall be the duty of said natural gas supervisor to make such repairs as may in his judgment be necessary to stop said leak; and such natural gas supervisor shall have a lien upon said pipe line and all wells with which the same may be connected for the cost of making such repairs, for the enforcement of which, with all costs of suit and a

reasonable attorney's fee, an action may be maintained by him in any court of competent jurisdiction; and the judgment so obtained shall be collectible without relief from valuation or appraisement laws of the State. In case of any pipe line, machinery, apparatus, appliance, or device owned by a corporation, partnership, or by a nonresident of or absentee from the State of Indiana, the notice herein provided may be served upon any person in charge of such pipe line. (Acts, 1899, p. 83. In force February 22, 1899.)

Sec. 4800. Pipes for carrying—Pressure.

Any person or persons, firm, company, or corporation engaged in drilling for, piping, transporting, using, or selling natural gas, may transport or conduct the same through sound wrought or cast iron castings and pipes tested to at least 400 pounds pressure to the square inch: *Provided*, Such gas shall not be transported through pipes at a pressure exceeding 300 pounds per square inch: *Provided*, That the provisions of this act shall not affect the costs in any pending litigation. (Acts, 1891, p. 89. As amended, acts, 1903, p. 110.)

NOTE 1.—Prior to the 1903 amendments this section prohibited the use of artificial means to increase the natural flow of the gas from a well and the transmission of gas by other than natural pressure. It was involved in three suits between Manufacturers' Gas & Oil Co. and Indiana Natural Gas Co.:

(*1*) In a suit by one lessee against the lessee of an adjoining tract, seeking to enjoin the other from large withdrawals, alleging an unreasonable destruction of the common supply, an injunction was granted based both upon the statute and upon the common law right of the plaintiff to protection: *Manufacturers' Gas & Oil Co.* v. *Indiana Natural Gas & Oil Co.*, 155 Ind. 461, 57 N. E. 912, 50 L. R. A. 768 (1900).

(*2*) A complaint asking an injunction against transportation of gas in excess of 300 pounds per square inch, on the ground that the defendants' act was destructive of the common source of supply, but failing to allege that the defendant's methods increased the natural flow of its wells, was held not to state a cause of action, and it was held that the statute was capable of enforcement only for the protection of persons and property against the inflammable, explosive, and dangerous character of natural gas in transit: *Manufacturers' Gas & Oil Co.* v. *Indiana Natural Gas & Oil Co.*, 155 Ind. 566, 58 N. E. 851 (1900).

(*3*) *Held*, That an allegation of diminution of the supply of natural gas from the common reservoir occasioned by violation of the act of March 4, 1891, did not constitute a cause of action, and that the statute was designed only to protect persons and property against injury occasioned by the dangerous characteristics of natural gas when transported at excessive pressures: *Manufacturers' Gas & Oil Co.* v. *Indiana Natural Gas & Oil Co.*, 156 Ind. 679, 59 N. E. 169.

(*4*) On rehearing, affirmed; but held that if by the defendants' pumping methods the natural flow of the wells had been increased, an injunction would have been sustained, not because the defendants were transporting natural gas under excessive pressures, but for the reason stated in *Manufacturers' Gas & Oil Co.* v. *Indiana Natural Gas & Oil Co.*, 155 Ind. 461, 57 N. E. 912, i. e., unreasonable depletion of a common source of gas.

A fifth decision in the litigation between these parties, 155 Ind. 545, 58 N. E. 706 (1900) is cited under the act of March 9, 1889, infra.

NOTE 2.—The act of March 4, 1891, was sustained in *Jamieson* v. *Indiana Natural Gas Co.*, 128 Ind. 555, 28 N. E. 76 (1891), cited in *Ohio Oil Co.* v. *Indiana*, 177 U. S. 190, 20 Sup. Ct. 576, 44 L. Ed. 729 (1900). In the Jamieson case a stockholder enjoined the company from carrying out a contract with the Columbus Construction Co. for the building of an interstate pipe line, on the ground that it could not be used except by violating the statute's prohibition against pressures exceeding 300 pounds and use of artificial means to increase pressures.

Benedict v. *Columbus Construction Co.*, 49 N. J. Eq. 33, 23 Atl. 485 (1892), refused an injunction by a stockholder against the construction company, sought on the same grounds as that in the case of *Jamieson* v. *Indiana Natural Gas & Oil Co.*, *supra*, and involving the same facts, holding that the statute, if construed to prohibit artificial pressure under 300 pounds, was unconstitutional, and if not so construed would not interfere with the contract between the gas company and the construction company.

NOTE 3.—In *Consumers' Gas Trust Co.* v. *American Plate Glass Co.*, 162 Ind. 393, 68 N. E. 1020 (1903) the gas company's right to an injunction against the drilling of a well on a railroad easement was attacked on the ground that the company was using pumps in violation of the act. It was held that since the pumps did not increase the pressure above 300 pounds per square inch, nor increase the natural flow of the wells, the statute was not violated.

NOTE 4.—In a suit by one operator to enjoin use by another of artificial means to increase the natural flow of gas, the trial court found that the defendant, whose wells had an open-flow capacity of 29,000,000 cubic feet daily, supplied gas to a town 38 miles distant, and that, without compressing, only about 2,000,000 cubic feet could be delivered under natural pressure at destination. It found that defendant did not propose to increase output above 29,000,000 cubic feet daily, but planned to maintain a back pressure and to deliver less than 29,000,000 cubic feet, but more than 2,000,000. *Held*, That so long as the defendant's act did not increase output above natural flow it was not in violation of the act of March 4, 1891, prohibiting transportation of gas at a pressure in excess of 300 pounds per square inch, or the use of artificial processes to increase natural flow. *Richmond Natural Gas Co.* v. *Enterprise Natural Gas Co.*, 31 Ind. App. 222, 66 N. E. 782 (1903).

NOTE 5.—See also *Ilo Oil Co.* v. *Indiana Natural Gas & Oil Co.*, 174 Ind. 635, 92 N. E. (1910).

Sec. 4801. Penalty.

Any person or persons, firm, company, or corporation violating any of the provisions of this act shall be fined in any sum not less than $1,000 or more than $10,000, and may be enjoined from conveying and transporting natural gas through pipes otherwise than in this act provided: *Provided*, That nothing in this section shall operate to prevent the use of nitroglycerine or other explosives for shooting any well or wells from which the gas is procured. (Ibid.)

Sec. 4802. To be confined in pipes.

It shall be unlawful for any person, firm, or corporation having possession or control of any natural gas or oil well, whether as a contractor, owner, lessee, agent, or manager to allow or permit the

flow of gas or oil from any such well to escape into the open air, without being confined within such well or proper pipes or other safe receptacle, for a longer period than two days next after gas or oil shall have been struck in such well. And thereafter all such gas or oil shall be safely and securely confined in such well, pipes, or other safe and proper receptacles. Any person, firm, or corporation violating any of the provisions of this section shall be fined in any sum not less than $50 nor more than $200, and for any second or subsequent violation of this section, he shall be fined in any sum not less than $200 nor more than $500. (Acts, 1893, p. 300. As amended, acts, 1913, p. 66.)

NOTE.—Held valid in *Ohio Oil Co.* v. *Indiana*, 177 U. S. 190, 20 Sup. Ct. 576, 44 L. Ed. 729 (1900), affg. 150 Ind. 21, 49 N. E. 809, 47 L. R. A. 627 (1898), on the ground of the State's authority to protect correlative rights and prevent waste. Id., 50 N. E. 1125. The penalty provision was added by acts 1913, p. 66. A different penalty provision ($200, each 10 days to be a separate offense; acts 1893, ch. 36, sec. 3) was upheld in *Ohio Oil Co.* v. *Indiana*, Case No. 2, 177 U. S. 212, 20 Sup. Ct. 585, 44 L. Ed. 740 (1900).

Conviction sustained in *Given* v. *State*, 160 Ind. 552, 66 N. E. 750 (1903), on the ground that the statute was a valid exercise of police power in preventing explosions and contamination of air, and it was unnecessary to consider whether its main purpose was the prevention of waste of natural gas. In this case the defendant permitted the gas to escape during the drilling of an oil well for a period longer than two days, in violation of section 1 of the act. (Acts 1893, p. 300, ch. 36.)

In *State of Indiana* v. *Alleghany Oil Co.*, 85 Fed. 870 (Cir. Ct. Ind. 1898) the State sued to recover a penalty for the benefit of Delaware County, under Horner's Annotated Statutes 1897, sec. 7479 (later amended) for permitting gas to blow to the air in violation of sec. 4802. A motion to remand was granted on jurisdictional grounds.

The original statute was cited in *Bailey* v. *State*, 163 Ind. 165, 71 N. E. 655 (1904), to require not only the confinement of gas on discovery but that gas be confined as long as the well is operated. But a new trial was ordered on erroneous exclusion of defendant's evidence that the gas was confined as soon as possible after discovery.

Sec. 4803. Packing and tubing such wells—Civil liability for expense.

Whenever any person or corporation in possession or control of any well in which natural gas or oil has been found shall fail to comply with the provisions of this act, any person or corporation lawfully in possession of lands situate adjacent to or in the vicinity or neighborhood of such well may enter upon the lands upon which such well is situate and take possession of such well from which gas or oil is allowed to escape in violation of the provisions of section 1 of this act, and pack and tube such well and shut in and secure the flow of gas or oil, and maintain a civil action in any court of competent jurisdiction in this State against the owner, lessee, agent, or manager of said well, and each of them, jointly and severally, to recover the cost and expense of such tubing and packing, together with attorney's fees and costs of suit. This shall be in addition to the penalties provided by section 3 of this act. (Acts, 1893, p. 300.)

Sec. 4804. Recovery of expense of plugging.

Whenever any person or corporation shall abandon or cease to operate any natural gas or oil well, and shall fail to comply with the provisions of section 2 of this act, any person or corporation lawfully in possession of lands adjacent to or in the vicinity or neighborhood of such well may enter upon the lands upon which such well is situated and take possession of such well, and plug and fill the same in the manner provided by section 2 of this act, and may maintain a civil action in any court of competent jurisdiction of this State against the person, persons, or corporations so failing, jointly and severally, to recover the costs and expense of such plugging and filling, together with attorney's fees and costs of suit. This shall be in addition to the penalties provided by section 3 of this act. (Ibid.)

Sec. 4805. Plugging abandoned wells.

Before the casing shall be drawn from any well drilled into gas or oil bearing rock for the purpose of abandoning the same, it shall be the duty of any person, firm, or corporation having the custody of such well, or having charge of removing the casing therefrom for the purpose of abandoning the same at the time of such abandonment, to properly and securely stop and plug each of said wells so abandoned in the following manner: Such hole shall first be solidly filled from the bottom thereof to a point at least 25 feet above such gas or oil bearing rock with sand, gravel, or pulverized rock, on the top of which filling shall be seated a dry pine wood plug not less than 2 feet long and having a diameter of one-fourth of an inch less than the inside diameter of the casing in such well; above such wooden plug such well shall be solidly filled for at least 25 feet with the above-mentioned filling material; immediately above this shall be seated another wooden plug of the same kind and size as above provided; and such well shall again be solidly filled for at least 25 feet above said second plug with such filling material. After the casing has been drawn from such well, there shall immediately be seated at the point in said well where such casing was seated a cast-iron ball, the diameter of which ball shall be greater than that of the hole below the point where such casing was seated, and above such ball such well shall again be solidly filled with the above-mentioned filling

material for a distance of 50 feet. Any person, firm, or corporation owning or having charge or supervision of any well which has been drilled into gas or oil bearing rock, or having charge or control of removing the drive pipe or casing from any such well, and from which the drive pipe and casing or the drive pipe alone has been or shall be pulled, leaving therein the tubing, casing, or both, shall give notice to the State natural-gas supervision [supervisor], and, under the supervision and direction of said supervisor or one of his assistants, shall plug such tubing where such tubing only remains in such well, and shall fill from the bottom up not less than 300 feet with cement and clean sand, 1 part Portland cement to 4 parts of sand, and where the casing and tubing remain in any such well, such well shall be filled on the packer with not less than 50 feet of Portland cement and sand, and if there be no such packer, with not less than 100 feet of Portland cement and sand, in the proportions hereinbefore indicated, and in all cases where the drive pipe and casing or either the drive pipe or casing are removed from any such well and the tubing is left therein said tubing shall be plugged as herein provided, and if any part of the tubing, drilling stem, or other substance prevent the plugging of any such well or wells as hereinbefore provided, such well or wells shall be filled to a point within 25 feet of the top part of said tubing, drill stem, or substance with sand, gravel, or crushed stone, and shall thereupon be filled to a point 25 feet above such part of tubing, drill stem, or substance with Portland cement and sand, all proportioned as above provided. (Acts, 1909, p. 234. In force March 5, 1909.)

NOTE.—Acts 1893, ch. 36, p. 300, from which this section was derived, was cited in *McDonald* v. *Carlin*, 163 Ind. 342, 71 N. E. 961 (Sup. Ct. Ind. 1904). In that case the question was whether a lessee who had plugged a well drilled by a previous occupant, who had not plugged it in the manner required by the statute, was entitled to set off the cost of the plugging in an action by his predecessor, brought on another contract. The decision turned on the terms of the contract.

Sec. 4806. Notice to supervisor; fee.

Any person, firm, or corporation, before proceeding to plug any such well so drilled into any gas or oil bearing rock, or to pull the casing or drive pipe therefrom, shall notify the State natural gas supervisor or one of his authorized assistants of such intention, and the time and place where such plugging is to be done, and it shall be the duty of said natural gas supervisor or his duly authorized assistants to be present in person all the time while such plugging is being done, and the same shall be done under his instructions and supervision, and such person, firm, or corporation so plugging such

well shall file, or cause to be filed, in the office of the recorder of the county in which any such well is located, within 15 days after the same has been plugged, as provided in section 1 hereof, a written statement of such State natural gas supervisor or his duly appointed assistant showing that such well was duly plugged under his personal supervision and instruction and in the manner herein prescribed and required, which statement shall be recorded in the miscellaneous records in the office of such recorder. And for supervising and superintending the plugging of any such well said person, firm, or corporation plugging such well or having the same done, shall pay in advance for doing any such work or plugging, a fee of five dollars to the State natural gas inspector or his assistant, to be by them turned into the State treasury. (Ibid.)

Sec. 4807. Salt water or oil; control.

It shall be the duty of every person, firm, or corporation who sinks or maintains a well to the depth of the oil or salt-bearing strata to prevent the salt water or oil of such well from flowing into fresh-water strata of that or any other well. (Ibid.)

Sec. 4808. Fresh water; casing off.

It shall be the duty of any person, firm, or corporation sinking a well into any gas or oil-bearing rock, or maintaining the same after it has been sunk, to case off and keep cased off all fresh water from such well until such well has been plugged as herein provided. (Ibid.)

Sec. 4809. Powers of supervisor.

For the purpose of enforcing the provisions of this act, the State natural gas supervisor is hereby authorized and empowered to enter upon any land at any time for the purpose of examining or testing any such well or wells for the purpose of plugging the same, and said supervisor and his assistants are hereby given police power to arrest persons found violating any of the provisions of this act. (Ibid.)

Sec. 4810. Penalty.

Any person, firm, or corporation violating any of the provisions of this act shall, on conviction, be fined in any sum not less than $100 nor more than $1,000, to which may be added imprisonment in the county jail not to exceed six months. (Ibid.)

Conviction for violation of section 1 of acts of 1893, p. 300 (sec. 4802), sustained in *Given* v. *State*, 160 Ind. 552, 66 N. E. 750 (1903).

CRIMINAL OFFENSES

CH. 5, ARTICLE 12: MISCELLANEOUS OFFENSES

Sec. 3016. Natural gas—Preventing waste.

The use of natural gas for illuminating purposes in what are known as "flambeau lights" is a wasteful and extravagant use thereof, and is dangerous to the public good, and it shall therefore be unlawful for any company, corporation, or person, for hire, pay, or otherwise, to use natural gas for illuminating purposes in what are known as "flambeau lights" in cities, towns, highways, or elsewhere: *Provided*, That nothing herein contained shall be construed as to prohibit any such company, corporation, or person from the necessary use of such gas in what are known as "jumbo" burners inclosed in glass globes or lamps, or by the use of other burners of similar character so inclosed, as will consume no more gas than said "jumbo" burners. (Acts, 1891, p. 55. In force June 3, 1891.)

NOTE.—Constitutionality sustained in *Townsend* v. *State*, 147 Ind. 624, 47 N. E. 19, 37 L. R. A. 294, 62 Am. St. Rep. 477 (1897), which affirmed a conviction for burning flambeau lights.

Sec. 3017. Jumbo burners—When lighted.

All gas lights in said "jumbo" burners and glass globes or lamps used in all streets and public highways shall be turned off not later than 8 o'clock in the morning each day such lights or burner is [*sic.*] used, and the same shall not be lighted between the hours of 8 o'clock a. m. and 5 o'clock p. m. (Ibid.)

Sec. 3018. Penalty.

Any one violating any of the provisions of section 1 of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not exceeding $25, and for a second offense may be fined in any sum not exceeding $200. (Ibid.)

NOTE.—Conviction for burning gas in flambeau lights sustained in *Townsend* v. *State*, 147 Ind. 624, 47 N. E. 19, 37 L. R. A. 294, 62 Am. St. Rep. 477 (1897).

SUMMARY OF REGULATIONS

JUNE 30, 1919: Logs required to be filed.

SEPTEMBER 15, 1927: Abandoned wells required to be plugged; the State geologist to determine whether the well has been abandoned.

OCTOBER 1, 1930: Method of plugging specified.

ANNOTATIONS TO OMITTED STATUTES:

ACT OF MARCH 9, 1889 (PROHIBITING EXPORTATION OF NATURAL GAS).

A complaint by one producer from a gas field, alleging solely that another producer was transporting gas from that field to points outside the State, and asking an injunction, was held not to state a cause of action, and the act was held unconstitutional, in *Manufacturers' Gas & Oil Co.* v. *Indiana Natural Gas & Oil Co.*, 155 Ind. 545, 58 N. E. 706 (1900).

Held unconstitutional in *State ex rel. Corwin* v. *Indiana & Ohio Oil, Gas & Mining Co.*, 120 Ind. 575, 22 N. E. 778 (1889).

ACTS 1899, P. 2, granting the right of eminent domain to companies serving domestic consumers and making no provision for companies serving other States, was attacked as an interference with interstate commerce and held constitutional in *Consumers' Gas Trust Co.* v. *Harless*, 13 Ind. 446, 29 N. E. 1062, 15 L. R. A. 505 (1892).

REVISED STATUTES 1894, SEC. 5108; ACTS 1889, P. 22. This statute forbade the condemnation of land for pipe lines within 75 yards of any dwelling. In *Windfall Mfg. Co.* v. *Patterson*, 148 Ind. 414, 47 N. E. 2, 62 A. S. R. 532, 37 L. R. A. 38, 18 M. R. 674 (1897), an injunction against the drilling of a well was denied, in the absence of a showing that the pipes must necessarily be laid within the prohibited distance.

ORDINANCES:

A statute prohibiting the bringing of nitroglycerin in excess of 100 pounds within the corporate limits of a town was sustained in *Peoples' Gas Co.* v. *Tyner*, 131 Ind. 277, 31 N. E. 59 (1892). See 85 Cent. L. J., 261 (1917). See also *Tyner* v. *Peoples' Gas Co.*, 131 Ind. 408, 31 N. E. 61 (1892).

STATE OF KANSAS

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STATE OF KANSAS

ACT OF MARCH 16, 1931

LAWS, 1931, CH. 226; APPROVED MAR. 16, 1931

EFFECTIVE MAY 28, 1931

AN ACT relating to and regulating the production of petroleum oil, and prohibiting waste thereof, and providing for the administration of this act.

Be it enacted by the LEGISLATURE of the State of Kansas:

Section 1. Waste prohibited.

That the production of crude oil or petroleum in the State of Kansas in such manner and under such conditions as to constitute waste is hereby prohibited and shall be unlawful.

Sec. 2. Waste defined; protection.

That the term " waste " as used herein, in addition to its ordinary meaning, shall include underground waste, surface waste, and waste of gas energy, and waste incident to the production of crude oil or petroleum. The public service commission shall have authority to make rules and regulations for the prevention of such wastes, and for the protection of all fresh-water strata, and oil-and-gas-bearing strata encountered in any well drilled for or producing oil.

Sec. 3. Production regulated; discrimination of purchaser prohibited.

That whenever the full production from any common source of supply of crude oil or petroleum in this State can only be obtained under conditions constituting waste as herein defined, then any person, firm, or corporation having the right to drill into and/or produce oil from any such common source of supply may take therefrom only such proportion of all the crude oil and petroleum that may be produced therefrom, without waste, as the production of the well or wells of any such person, firm, or corporation bears to the total production of such common source of supply. The public service commission is authorized to so regulate the taking of crude oil or petroleum from any one common source of supply within the State of Kansas as to prevent the inequitable or unfair taking from such common source of supply of such crude oil or petroleum by any person, firm, or corporation and to prevent unreasonable dis-

crimination therein: *Provided*, That the power granted in this section shall not apply to wells from which the average daily production of crude oil or petroleum is less than 15 barrels per day.

Sec. 4. Wells gaged.

That for the purpose of enforcing section 3, said public-service commission, under rules and regulations to be made by it, shall provide for a gage of each well to determine its production and the total production from the common source of supply, or by such rules and regulations to establish such other standard or standards as the commission may fix to determine the potential production of each well in the common source of supply and the total potential production of said common source of supply for the purpose of applying and enforcing the provisions of section 3. The commission is hereby authorized to employ or appoint such agent or agents as may be necessary to enforce and administer the provisions of this act, such agent or agents, with the exception of clerical help, to be a person or persons experienced in and conversant with the oil business.

Sec. 5. Enforcement of act.

The public-service commission shall have and is hereby given jurisdiction and authority over all matters involving the application and enforcement of this act, and shall have authority to make rules and regulations for the prevention of waste as herein defined. That any person, firm, or corporation, or the attorney general on behalf of the State, may institute proceedings before the public-service commission or apply for hearing before said commission upon any question relating to the enforcement of this act or the enforcement of any rule or regulation promulgated thereunder by said commission, and jurisdiction is hereby conferred upon said commission to hear and determine the same. Said commission shall set a time and place when such hearing shall be had, and give reasonable notice thereof to all persons or classes interested therein by publication in some newspaper or newspapers having a general circulation in the State, and shall in addition thereto cause notice to be served in writing upon any person, firm, or corporation complained against in the manner now provided by law for serving summons in civil actions. In the exercise and enforcement of such jurisdiction said commission is authorized to summon witnesses, make ancillary orders, and use such mesne and final process, including inspection of records, books, and analogous to proceedings under its control over public-service corporations as now provided by law. In connection with the exercise and enforcement of its jurisdiction, the commission shall also have the right and authority to certify as for contempt to the

district court of any county having jurisdiction, violations by any person, firm, or corporation of any of the provisions of this act or orders of the commission, and if it be found by said district court that such person, firm, or corporation has knowingly and willfully violated any order of the commission or the provisions of this act, then such person shall be punished as for contempt in the same manner and to the same extent and with like effect as if such contempt had been of the order, judgment, and decree of the district court to which said certification is made.

Sec. 6. Jurisdiction of court.

An action may be brought against the public service commission in the district court of the county wherein the property being administered is located, or, if the property being administered is located in adjacent counties, then the jurisdiction shall lie in either county. Such action may be brought by any person, firm, or corporation shown to be interested therein, except the time for beginning such action shall be limited to 30 days from the date of the order in question. Any order so attacked may be superseded only by the court, and after a hearing, upon such terms and conditions as there may be imposed. All actions brought under this section shall have precedence in any court, and on motion shall be advanced over any civil cause of different nature pending in such court, and such action shall be tried and determined as other civil actions.

Sec. 7. Penalty for violation.

That in addition to any penalty that may be imposed by the public service commission, any person, firm, or corporation, or any officer, agent, or employee thereof, directly or indirectly, violating the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof in a court of competent jurisdiction shall be punished by a fine in any sum not to exceed $5,000, or by imprisonment in the county jail not to exceed 30 days, or by both fine and imprisonment.

Sec. 8. State may secure receiver; extent and manner.

That in addition to any penalty imposed under the preceding section, any person, firm, or corporation violating the provisions of this act shall be subject to have his or its producing property placed in the hands of a receiver by a court of competent jurisdiction, at the suit of the State through the attorney general or any county attorney, but such receivership shall only extend to the operating of producing wells and the marketing of the production thereof, under the provisions of this act.

Sec. 9. Taxes, assessments.

The public service commission is hereby authorized and directed to tax and assess against the parties involved in any hearing or application the costs incurred therein, and also all costs to the State of Kansas incurred in making necessary investigations and inforcing its orders under this act and divide such costs among the parties in such proportions as is just and equitable.

Sec. 10. Separability.

If any section, subsection, paragraph, or provision of this act shall be held to be invalid by any court for any reason, it shall be presumed that this act would have been passed by the legislature without such invalid section, subsection, paragraph, or provision, and such finding or conclusion shall not in any way affect the remainder of this act.

Sec. 11. Effective date.

This act shall take effect and be in full force from and after its publication in the statute book. [May 28, 1931.]

REVISED STATUTES ANNOTATED, 1923

CHAPTER 55, P. 781 ET SEQ.

ARTICLE I

101.

Omitted; relates to rights of way for pipe lines.

102. Control and management of natural gas and oil wells—Escape of gas or oil two days after discovery not permitted.

That it shall be unlawful for any person, firm, or corporation having possession or control of any natural gas or oil well—whether as a contractor, owner, lessee, agent, or manager—to use or permit the use of gas by direct well pressure for pumping of oil or for blowing oil out of wells, or for operating any machinery by direct well pressure of gas, or to allow or permit the flow of gas or oil from any such well to escape into the open air without being confined within such well or proper pipes or other safe receptacle for a longer period than two days after gas or oil shall have been struck in such well: *Provided*, That a reasonable time, not exceeding five days, shall be allowed such contractor, owner, lessee, agent, or manager, in addition to said two days, in which to place in said well the casing tubing,

packers, and other appliances necessary to properly operate the same and obtain the products therefrom; or in case such contractor, owner, lessee, agent, or manager shall not desire to operate such well to securely inclose the same so as to prevent the escape of oil or gas therefrom, and thereafter all such gas or oil shall be safely and securely confined in such well, pipes, or other proper receptacle: *And provided further*, That the provisions of this section shall not be construed to apply to the escape of gas or oil during continuous drilling. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and shall be fined in the sum not less than $50 nor more than $200 or by imprisonment in the county jail for not less than 30 days nor more than 6 months, and each day that the violation continues shall constitute a separate offense. (Laws 1901, ch. 224, sec. 1; March 22, 1901.)

NOTE.—In *Arnold* v. *Garnett Light & Fuel Company*, 103 Kan. 477, 174 Pac. 1027 (1918), (see also 103 Kan. 166, 172 Pac. 1012), it was held that while this section would authorize prosecution by the State for waste of gas and also an action by an individual injured by its violation, that by the terms of a contract between the plaintiff and the defendant, both of whom were operators in the same field, the waste of gas by one of them could not be enjoined by the other.

103. Flambeau lights forbidden—"Jumbo" or similar burners permitted.

That it shall be unlawful for any company, corporation, or person, for hire, pay, or otherwise, to use natural gas for illuminating purposes in what are known as "flambeau" lights in cities, towns, highways, or elsewhere: *Provided*, That nothing herein contained shall be so construed as to prohibit any such company, corporation, or person from the necessary use of such gas in what are known as "Jumbo" burners, inclosed in glass globes or lamps, or by the use of other burners of similar character so inclosed as will consume no more than said "Jumbo" burners. (Laws, 1901, ch. 224, sec. 2; March 22, 1901.)

104. Street lights.

All gaslights made through said "Jumbo" burners, inclosed in glass globes or lamps used in all public streets and elsewhere outside of buildings, shall be turned off not later than 8 o'clock in the morning each day such lights or burners are used, and the same shall not be lighted between the hours of 8 o'clock a. m. and 5 o'clock p. m. (Laws, 1901, ch. 224, sec. 3; March 22, 1901.)

105. Penalty for violating two preceding sections.

Any person, company, or corporation violating any of the provisions of sections 2 and 3 of this act shall be deemed guilty of a mis-

demeanor, and fined in the sum of not less than $50 nor more than $200. (Laws, 1901, ch. 224, sec. 4; March 22, 1901.)

106–107.

Omitted; relate to interference by trespassers with pipes.

108. Setting fire to escaping gas—Interference with wells.

That it shall be unlawful for any person or persons to set fire to any gas escaping from wells, broken or leaking mains, pipes, valves, or other appliances used by any person, company, or corporation in conveying gas, or to interfere in any manner with the wells, machinery, or property of any person, company, or corporation engaged in drilling for natural gas or in furnishing the same, unless employed by or acting under the authority or direction of such person, company, or corporation engaged in so furnishing gas. (Laws, 1901, ch. 224, sec. 7; March 22, 1901.)

109. Penalty and liability for violating three preceding sections.

Any person violating any of the provisions of sections 5, 6, and 7 of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than $25 nor more than $100, and shall be liable to the said person, company, or corporation whose property was so changed, injured, altered, or destroyed, in a civil action for the amount of damages sustained, together with all the costs in the case. (Laws 1901, ch. 224, sec. 8; March 22, 1901.)

110. Gas or oil wells near railway.

It shall be unlawful for any person, firm, company, or corporation in this State to drill or operate gas or oil wells within 100 feet of the center of the right of way of any steam or electric line of railway. (Laws 1905, ch. 210, sec. 1; June 8, 1905.)

NOTE.—Held constitutional in *Winkler* v. *Anderson*, 104 Kans. 1, 177 Pac. 521, 3 A. L. R. 268 (1919), although the lease against which this provision was enforced was thereby made valueless.

111. Penalty for violating preceding section.

Any person, firm, company, or corporation violating the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than $100 nor more than $1,000. (Laws 1905, ch. 210, sec. 2; June 8, 1905.)

112. Transportation of gas—Pressure.

That any person or persons, firm, company, or corporation engaged in drilling for, piping, transporting, using, or selling natural gas may transport or conduct the same through sound wrought or cast iron or steel casings and pipes tested to at least 400 pounds pressure to the square inch. (Laws, 1905, ch. 312, sec. 1; March 8, 1905.)

113. Device to increase natural flow of gas forbidden—Casing-head gas exception.

It is hereby declared to be unlawful for any person or persons, firm, company, or corporation to use any device for pumping or any other artificial process or appliance that shall have the effect of increasing the natural flow of natural gas out of any well: *Provided*, That nothing in this section contained shall apply to oil wells producing casing-head gas. (Laws, 1905, ch. 312, sec. 2; Laws, 1920, ch. 43, sec. 1; January 31, 1920.)

114. Penalty for violation.

Any person or persons, firm, company, or corporation violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than $100 or more than $10,000, and may be enjoined from conveying and transporting natural gas through pipes otherwise than in this act provided: *Provided*, That nothing in this section shall operate to prevent the use of nitro-glycerine or other explosives for shooting any well or wells from which the gas is procured. (Laws, 1905, ch. 312, sec. 3; March 8, 1905.)

115. Casing gas or oil wells.

That the owner or operator of any well put down for the purpose of exploring for and producing oil or gas shall, before drilling into the oil or gas bearing rock, incase the well with good and sufficient wrought-iron oil-well casing, and in such manner as to exclude all surface or fresh water from the lower part of such well, and from penetrating the oil or gas bearing rock. Should any well be put down through the first into a lower oil or gas bearing rock, the same shall be cased in such manner as will exclude all fresh or salt water from both upper and lower oil or gas bearing rocks penetrated. (Laws, 1891, ch. 151, sec. 1; March 20, 1891.)

116. Filling and plugging wells before drawing casing.

The owner of any well, when about to abandon or cease operating the same, for the purpose of excluding all fresh or salt water from penetrating the oil or gas bearing rock or rocks, and before drawing the casing, shall fill the well with sand or rock sediment to the depth of 2 feet below the top of each oil or gas bearing rock, and drive

therein a round, seasoned wooden plug at least 2 feet in length, and in diameter equal to the full diameter of the well below the casing, and immediately upon drawing the casing, shall fill in on top of such plug with sand or rock sediment to the depth of 5 feet, and again drive into the well a round wooden plug 3 feet in length, the lower end tapering to a point, and to be of the same diameter at the distance of 18 inches from the smaller end as the diameter of the well below the point at which it is driven; and after such plug has been driven, the well shall be filled with sand or rock sediment to the depth of 20 feet. (Laws, 1891, ch. 151, sec. 2; March 20, 1891.)

NOTE.—*Held*, That Laws 1891, ch. 151, imposing a penalty for failure to plug an abandoned well, could be invoked only against the owner of the land and not against the operator, although for failure to case out water during the drilling both the operator and the owner could be punished. *State* v. *Foster*, 106 Kan. 852, 189 Pac. 953 (1920).

117. Penalty for violating two preceding sections.

Any owner or operator or person who shall violate the provisions of the preceding sections of this act shall be guilty of a misdemeanor, and shall be fined in the sum of $500 for each and every offense, which fine when collected shall be paid to the school fund of the county in which the well is situated. (Ibid., sec. 3.)

118. Casing to exclude minerals or salt.

If any well or other excavation be put down to or through any vein or strata containing salt water or water containing any minerals in appreciable quantities, it shall be the duty of the owner or operator, driller, or person putting down such well or excavation, to case or plug such well or excavation in such manner as to exclude all salt water or water containing minerals in appreciable quantities from both upper and lower veins or strata holding water suitable for domestic purposes. (Laws, 1919, ch. 233, sec. 1; March 4, 1919.)

119. Remedy for failure therein.

All persons, companies, or corporations, private or municipal, owning or controlling a supply of water for domestic purposes, injured or threatened with injury by a violation of the provisions of section 1 of this act, shall be entitled to a remedy by injunction, mandatory or prohibitive, in any court of competent jurisdiction against any person, company or corporation causing or threatening to cause such injury. (Laws 1919, ch. 233, sec. 2; March 4, 1919.)

120. Penalty for violation of act.

Any violation of section 1 of this act shall be a misdemeanor, punishable by fine of not more than $1,000. Prosecutions under this act must be begun within six months after the commission of the offense. (Laws 1919, ch. 233, sec. 3; March 4, 1919.)

121. Refuse from wells—Escape of oil or salt water.

It shall be unlawful for any person having possession or control of any well drilled or being drilled for oil or gas, either as contractor, owner, lessee, agent, or manager, or in any other capacity to permit salt water, oil, or refuse from any such well to escape upon the ground and flow away from the immediate vicinity of such well, and it shall be the duty of any such person to keep such salt water, oil, or refuse safely confined in tanks, pipe lines, or ponds so as to prevent the escape thereof: *Provided, however*, That this act shall not be construed to apply to the escape of salt water, oil, or refuse because of circumstances beyond the control of the person in the possession or control of such well and under circumstances which could not have been reasonably anticipated and guarded against. (Laws, 1921, ch. 198, sec. 1; March 10, 1921.)

NOTE.—Sustained in *State* v. *Lebow*, 128 Kan. 715, 280 Pac. 773 (1929), which affirmed a conviction for stream pollution.

122. Violation of preceding section.

Any person knowingly or willfully violating any of the provisions of the preceding section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding $1,000, or by imprisonment not exceeding one year, or by both such fine and imprisonment, and each day any such violation continues shall be deemed a separate offense. (Laws, 1921, ch. 198, sec. 2; March 10, 1921.)

123. Appointment of person to supervise plugging of wells.

For the purpose of carrying out the provisions of Laws, 1891, chapter 151, section 2, the board of county commissioners of each county in the State of Kansas in which oil or gas wells have been drilled or may hereafter be drilled may appoint some suitable person who has had at least two years' experience in drilling and operating oil or gas wells and who is not directly interested in the production of gas or oil, to personally direct and supervise the plugging of oil or gas wells sought to be plugged, whose term of service shall be at option of the county commissioners, but who shall serve until his successor is appointed. (Laws, 1913, ch. 201, sec. 1; April 30, 1913.)

ARTICLE II

(OMITTED)

ARTICLE III

301. Gas inspector.

In each county in this State the board of county commissioners is hereby authorized, in its discretion, to appoint a suitable and competent person, who shall not be interested privately in producing, piping, or selling natural gas, to be known and designated as the "gas inspector" of such county, who shall serve for a term of two years from the date of his appointment and qualification and until his successor shall be appointed and qualified: *Provided*, That said board may end said term by an order to that effect at any time after the expiration of said period of two years without appointing such successor. (Laws, 1905, ch. 313, sec. 1; March 24, 1905.)

302, 303.

Omitted; relate to reports to inspector and his oath and bond.

304. Duties of inspector.

It shall be the duty of such inspector to see that all provisions of law pertaining to the drilling for gas, the regulating of gas wells, and the piping and consumption of natural gas are faithfully carried out, and that the penalties of such laws are enforced against all violators of the same; and to that end he shall promptly report all violations of such laws that come to his knowledge to the county attorney of his county and file a proper complaint for the prosecution of the offender. (Laws, 1905, ch. 313, sec. 4; March 24, 1905.)

305. Inspection of gas wells—Records.

Said inspector shall inspect all gas wells in his county. He shall measure and record, as nearly as can be ascertained, the initial rock pressure of, and also the volume of gas produced by, each of such wells. Such inspection shall be made and measurements taken and recorded at least once in each 6-month period during his term of office, and at any other time or times directed by the board of county commissioners. All such records shall be entered and kept in substantially bound record books, suitably ruled, printed, indexed, and arranged for that purpose, to be provided by the county and kept in the office of the register of deeds subject to public inspection. (Laws, 1905, ch. 313, sec. 5; March 24, 1905.)

306. Inspection of pipe lines—Quantity of gas allowable—Excess deemed waste.

Such inspector shall also inspect all natural-gas pipe lines in his county at least once in every period of six months during his term of office, and as much oftener as may be necessary or as may be directed by the board of county commissioners, and shall test and record the pressure of the gas therein and the volume of the flow through the same, as nearly as is practicable. If he shall discover any leakage or waste of gas from any such well or pipe line he shall notify the owner thereof or his agents or servants, or some one of them, of that fact, and if such leakage or waste be not stopped within two days after such notice, it shall be and it is hereby made the duty of such inspector to take such steps and make such changes and repairs as may in his judgment be necessary to stop said waste or leakage; and he shall have a lien upon said well or pipe line and all wells with which the same may be connected for the material, labor, and cost of making such repair, for the enforcement of which, with all costs of suit and a reasonable attorney's fee, an action may be maintained by said inspector in any court of competent jurisdiction; and if gas shall be taken from any well at a rate such as to consume more than 50 per cent of its daily production, it shall be deemed a waste within the meaning of this clause to the extent of such excess. If any owner of any such well or pipe line, or any agent or servant of such owner in charge and control of such well or pipe line, shall for more than two days after the service of the notice last aforesaid fail to stop the leakage or waste by this clause prohibited, such owner, agent, or servant shall be guilty of a misdemeanor, and on conviction thereof shall be fined a sum of not less than $25 nor more than $500 for each offense, and each day that such failure continues after the expiration of the said period of two days shall constitute a separate offense. (Laws, 1905, ch. 313, sec. 6; March 24, 1905.)

307. Duties of owners of natural-gas wells or pipe lines.

Omitted; relates to cooperation with inspectors.

308. Duties of inspector; equipment.

Omitted; relates to deputies, bonds, instruments, etc.

309. General penalty for violations.

Any person violating any of the foregoing provisions of this act, except those for the violation of which penalties are especially prescribed, shall be guilty of a misdemeanor, and on conviction thereof

shall be fined in a sum of not less than $25 nor more than $500. (Laws, 1905, ch. 313, sec. 9; March 24, 1905.)

310. Compensation of inspectors and deputies.

Omitted.

ARTICLE XII

12-106. Grant of Franchises.

Cities of the second and third class shall have power to grant to any person or corporation the use of the streets, alleys, or public grounds for the purpose of laying water, steam, or gas pipes, or conduits for electric light or power, telegraph, telephone, or other use, to be used in furnishing or supplying such city and its inhabitants with water, light, heat, power, or service, and grant permits or make contracts with persons or corporations to mine coal, oil, or gas within the limits of said city, under such restrictions as shall protect public and private property and insure proper remuneration for such grants: *Provided*, That no franchise, right of way, or privilege of any character whatever shall be granted for a longer period than 20 years. (Revised, 1923.)

NOTE.—Ordinance No. 512 of the city of Oxford, promulgated under this section, limiting oil wells to one per city block, conferring upon all landowners in the block an interest in royalty in proportion to their acreage and entitling their lessees to participate in the working interest on contribution to the cost of the well, was sustained in *Marrs* v. *City of Oxford*, 24 Fed. (2d) 551, 32 Fed. (2d) 134, 67 A. L. R. 1336 (1929), Cert. den. 280 U. S. 573, 50 Sup. Ct. 29, 74 L. Ed. 51, and by the same courts in a consolidated action, *Ramsey* v. *City of Oxford*, Cert. den., 280 U. S. 563, 50 Sup. Ct. 24, 74 L. Ed. 617 (1929).

A preliminary injunction against enforcement of the same ordinance was refused in *Ramsey* v. *City of Oxford*, 124 Kan. 713, 261 Pac. 572 (1927), on the ground that the plaintiff had failed to show loss, and postponing constitutional considerations to the trial. It does not appear that the case was thereafter heard in the State courts.

Ordinance of the city of Oxford under R. S.—Sec. 12-106 (1923). Approved June 20, 1917.

(Sustained in Marrs *v.* City of Oxford, 24 F. (2d) 551, 32 F. (2d) 134, 67 A. L. R. 1336 (1929), Cert. den., 280 U. S. 573, 50 Sup. Ct. 29, 74 L. Ed. 51, supra.)

ORDINANCE NO. 512

An ordinance regulating the drilling of oil and gas wells within the limits of the city of Oxford and establishing restrictions thereon, and amending ordinance No. 509 of said city.

Be it ordained by the governing body of the city of Oxford, Kansas:

SECTION 1. That it shall be unlawful for any person, partnership, association of persons, or any corporation to drill or commence to drill a well for oil or gas within that portion of the city limits bounded on the west by Pacific Avenue north of Cedar Street and by Kansas Avenue south of Cedar Street to the Santa Fe tracks, on the north by Elm Street, on the east by a line running north and south three hundred (300) feet east of and parallel with the east line of Water Street until said line reaches the Arkansas River, and thence south by Arkansas River, and on the south by Cedar Street west of Kansas Avenue, and by the Santa Fe tracks east of Kansas Avenue, or to work upon or assist in any way in the prosecution of any such well without a permit for such well and for the prosecution of the development having first been issued by the authority of the governing body of the city in accordance with the terms of this ordinance.

SECTION 2. That within the boundaries set forth in section 1 of this ordinance there shall be only one permit issued for one well in each block, except that where more than one producing oil or gas sand shall be found in such block a permit may be granted for one well to each of such sands in such block, and that with such exception it shall be unlawful to drill more than one oil or gas well in a block; and for the purposes of this ordinance the spaces of ground immediately adjoining on the east, blocks Nos. 81, 82, 83, 84, 85, 87, and 88 of said city, respectively, and lying within a distance of three hundred (300) feet of the west line of said numbered blocks shall with the adjacent numbered blocks, respectively, aforesaid be deemed a city block, and block No. 77, with the adjacent land marked "A" on the east to the extent of three hundred (300) feet from the east line of Water Street between the numbered block and the river, shall together be deemed one block; block No. 78 and outlet No. 17, to the extent of three hundred (300) feet from the east line of Water Street, shall be deemed together one block; and block No. 79 and outlet No. 18, to the extent of three hundred (300) feet from the east line of Water Street, shall together be deemed one block; and block No. 80 and outlet No. 19, to the extent of three hundred (300) feet from the east line of Water Street, shall together be deemed one block; and the area covered by the high-school tract shall be deemed four blocks of equal size, divided by lines drawn north and south and east and west through the center.

SECTION 3. That in case a permit for the drilling of a well be issued to a person, persons, or corporation not holding oil and gas leases or drilling contracts with the owners of all the lots in the block, it shall be a condition of the permit that the permittee, its successors and assigns, shall deliver to the credit of each of such

owners whose land shall not be under lease free of cost in the pipe line to which the well may be connected a share of all oil produced and saved from such well equal to one-eighth of the proportion of the whole production that the square feet of ground so owned bears to the square feet contained in such block, exclusive of the streets and alleys, and a like proportion of the proceeds of gas and casing-head gas produced from the well and used off the premises.

SECTION 4. That it shall be unlawful for any person, persons, association of persons, or corporation to drill an oil or gas well, or to extend or deepen one already drilled, in the city of Oxford outside of the limits defined by section 1 of this ordinance, at a point nearer than one hundred fifty (150) feet to the streets or the railway track or other boundary named in section 1 of this ordinance as the outside boundaries of the restricted district therein defined, except that this provision shall not apply to the east boundary of the restricted district as defined in section 1.

SECTION 5. That in case there be application filed with the city clerk and pending at the same time, for permits to drill in any one block in the city, by more than one applicant, that application shall be granted, if otherwise sufficient, which shall be made by the person, association, or corporation holding the greater area of the ground in the block, by lease or other contract with the owner, permitting the drilling thereon for oil or gas; but, in case a permit be issued to persons or corporations who do not hold lease or other valid drilling contract in writing from the owners of all of the land within the block, other than alleys, any owner of unleased land in the block, and any person or corporation other than the permittee, holding oil and gas leases on land in the block, shall have the right to share in the ownership and benefits of such oil or gas well in the proportion that the area of his or its land or lease bears to the area of the block, exclusive of streets and alleys, provided that within ten days from the date of the issuance of such permit, he or it shall file with the city clerk his or its election in writing to pay to the holder of the permit, or his or its assigns, a like proportion of the total cost and expense of completing and operating the well, and shall within that time make and file with the city clerk a bond with an authorized surety company as surety, and in an amount representing that portion of the estimated maximum cost of the well that the area of ground owned or held under lease by the principal bears to the whole area of the block, conditioned that the principal in the bond will pay to the permittee and his assigns such proportion of the cost and operations of the well, from time to time, as required in the operations, such bond to be approved by the mayor and held by the city clerk for the benefit of all persons interested.

SECTION 6. That it shall be unlawful to drill any oil or gas well within any of the streets or alleys of the city, or to block or incumber or close up any street or alley in any drilling or production operations, except by special permit by order of the governing body, and then only temporarily.

SECTION 7. That every application for a permit to drill a well shall be in writing signed by the applicant or some person in his or its behalf; it shall be filed with the city clerk and be accompanied with a deposit of $100.00 in cash. The application shall state the block and the particular lot and location in the block where the proposed well is to be located, and have attached to it certified copies of all oil and gas leases, or other drilling contracts with the owners of land in the block which applicant may have, together with abstracts of title or certificates of title satisfactory to the governing body, to the end that the application will show what proportion and what parts of the block the applicant holds under lease or contract from the owner. The application shall also be accompanied with a plat or map of the block showing the exact location of the proposed well, which shall be as nearly as practicable at the center of the block. The application shall also be accompanied with a duly executed bond given by the applicant as principal and a surety company authorized to do business in the State of Kansas, as surety running to the city of Oxford, for the benefit of the city and all persons, firms, and corporations concerned, conditioned that if the permit be granted, the applicant and his or its assigns will comply with the terms and conditions of this ordinance in the drilling and operation of the well, will pay to any owners of land in the block, on which the applicant shall not hold oil and gas lease or contract, the oil and gas royalties as herein provided; that the applicant will restore the streets and sidewalks and other public places of the city which may be disturbed in the operations to their former condition, will clear the block and lots of all litter, machinery, derricks, buildings, oil, and other substance erected, used, or allowed in the drilling or producing operations, whenever the well shall be abandoned, or the operation thereof discontinued; and that he or it will pay to the owners of any buildings, improvements, goods, or chattels located in the block, any extra cost of insurance on such property; imposed by reason of the granting of the permit or the operations carried on thereunder, and any and all damages suffered by any person or corporation as to property in the city from fire, over and above insurance collected thereon, or from oil, gas, or water caused by or originating from the operations connected with such well, and will hold the city harmless from any or all liability growing out of the granting of such permit. Such bond shall be in the sum of $50,000.00 in the case of applications

for permits to drill upon any of blocks Nos. 24, 25, 30, 32, 33, 34, 39, 40, and 41 in the city, except where the applicant holds oil and gas leases on the entire block, when the bond shall be for only $25,000.00, and in the sum of $25,000.00 in the case of applications for permits elsewhere within the boundaries defined in section 1 of this ordinance. Provided, that in cases other than in the above numbered blocks, where the applicant for the permit holds oil and gas leases on the entire block and there are no buildings or other improvements thereon, the bond need not be in excess of $5,000.00; and shall be approved by the mayor and filed with the city clerk.

The governing body shall have the power and reserve the authority to refuse any application for a permit where, by reason of the location of the proposed well and the character and value of the permanent improvements already erected on the block in question, or adjacent thereto, and the use to which the land and surroundings are adapted for civic purposes, or for sanitary reasons, the drilling of an oil or gas well will be a serious disadvantage to the city and its inhabitants as a whole; but that when a permit shall be refused for any of these reasons, but not otherwise, the deposit of cash made with the application shall be returned to the applicant. Except as hereinbefore provided, if an application be found by the governing body to comply in all respects with the terms of this ordinance, the city clerk shall be authorized to issue a permit for the drilling of the well applied for, but no single application shall be made for a permit covering more than one city block as herein defined. The permit shall specify the particular location of the well to be drilled, and it shall be unlawful for the permittee to drill elsewhere in the block.

SECTION 8. That it shall be unlawful to erect or use within the boundaries defined in section 1 hereof, or elsewhere in the city within three hundred (300) feet of a residence or business or public building, in the drilling or operation of any oil or gas well, any drilling rig without enclosing it on all sides, and every such drilling plant shall be equipped with fire extinguishers maintained in good order. No storage of oil or facilities therefor shall be kept, erected, or maintained within the boundaries defined in section 1 of this ordinance, except to the extent of not to exceed five hundred barrels for each well.

SECTION 9. That no permit shall be granted or issued for the drilling of a well except upon ground held by the applicant under oil and gas lease or drilling contract from the owner, giving the owner's permission to drill the well; and when a permit shall have been issued, the same shall terminate and become inoperative without any action on the part of the governing body of the city, unless within

thirty days from the date of issue actual drilling of the well shall have commenced, and after the drilling of a well shall have commenced the cessation for a like period of the drilling operations, or the cessation of production of oil or gas from the well after production shall have commenced, shall operate to terminate and cancel the permit and the well shall be considered as abandoned for all purposes of this ordinance, and it shall be unlawful thereafter to continue the operation or drilling of such well without the issuance of another permit.

SECTION 10. That neither this ordinance, nor any permit issued hereunder, shall be interpreted to grant any right or license to the permittee to enter upon or occupy in any respect in the drilling or production operations any land except by the written consent of the owner, nor shall it limit or prevent the free right of any lot owner to contract for the amount of royalty to be paid with respect to his own land, or for damages, rights, or privileges with respect thereto.

SECTION 11. That in operating under any permit issued under this ordinance, or any amendment thereto, all oil, gas, and water produced or arising from the operations shall be piped or otherwise conveyed or removed from the territory of the city within the boundaries defined in section 1 hereof, except the ordinary use of a slush pond, and all excavations in or use of the streets and alleys in such operations shall be under the reasonable direction of the street commissioner of the city and done without unreasonable obstruction of the streets and without expense or cost to the city.

SECTION 12. That no permit which shall be issued under this ordinance or under any amendments hereto, or any rights, privileges, or franchise granted hereby or hereunder, shall exist longer than for a period of twenty years from the date of issuance of the permit.

SECTION 13. That any violation of any of the terms of this ordinance, whether herein denominated as unlawful or not, shall be deemed a misdemeanor, and any person or corporation convicted of any such violation shall be fined in a sum not exceeding one hundred dollars, and any person so convicted shall be committed to jail until such fine and the costs are paid. Each day of the continuance of such violation shall be considered a separate offense and be punishable separately, and any person, agent, or employee engaged in any such violation shall on conviction be so punished therefor.

SECTION 14. That the ordinance No. 509 and all ordinances or parts of ordinances of the city which are in conflict with any of the terms of this ordinance be, and the same are hereby, repealed.

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SECTION 15. That this ordinance shall take effect and be in force from and after its publication in the Oxford Register, a weekly newspaper published in the city of Oxford.

REGULATIONS

Orders are issued from time to time. The following are extracts:

Regulations—December 24, 1931—Stafford, Barton, Ellsworth, and Rice Counties:

1. Each forty (40) acre tract shall be considered as the unit for the allowable production for all future development and operation from said siliceous lime areas.

2. The basis of allowable production shall be the average of the potential production of all wells drilled on a unit of forty (40) acres and in taking the allowable production the same percentage shall be taken from each producing well upon said unit.

3. From a tract of less than forty (40) acres the allowable production shall be in the proportion which the acreage in that tract bears to forty (40) acres.

4. The total allowable production from said siliceous lime areas under consideration, shall be based upon the pipe line and loading rack bona fide nominations of purchasers of oil from those areas, provided, however, that said nominations of purchasers do not discriminate against the producers of oil in other pools in the State.

5. That the drilling of an oil or gas well within 330 feet of any property line of the land belonging to another is prohibited, without first having obtained the written permission of the commission.

6. That the commission retains jurisdiction to make such rules and further orders in the premises as may be necessary to provide for the prevention of waste and prevent the inequitable and unfair taking of oil and to provide for the equitable taking of oil.

ANNOTATIONS TO OMITTED STATUTES:

Laws 1911, chapter 238, section 3:

Western Distributing Co. v. *Kansas Public Service Commission*, 285 U. S. 119, 52 Sup. Ct. 283, 76 L. Ed. 404 (1932), dismissed an injunction against inquiry by the commission into the reasonableness of the price paid for gas by an intrastate gas distributor to an affiliated interstate carrier.

Laws 1911, chapter 238, section 3:

Public Utilities Comm. v. *Landon*, 249 U. S. 236, 39 Sup. Ct. 268, 63 L. Ed. 577 (1919), held that an interstate carrier of gas could not complain of rates fixed by the Kansas Public Service Commission for resale by its purchasers to their own customers. This decree was modified at 249 U. S. 591. The effect of the modification, ordering new evidence, does not alter the foregoing statement. See *Myron Green Cafeterias Co.* v. *Kansas City*, 240 S. W. 132 (1922).

STATE OF KENTUCKY

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1892: Act of May 14, 1892; Carroll's Ky. Stats., ch. 100 . . . 141
1917: Act of May 2, 1917; Acts, 1917, Sp. Sess., ch. 9, p. 43 . . 141
1920: Act of March 18, 1920; Carroll's Ky. Stats., ch. 93A . . 144

STATE OF KENTUCKY

ACT OF MAY 2, 1917

CH. 9, ACTS OF KENTUCKY, SPECIAL SESSION, 1917, P. 43

[*Sec. 2. Valuation of oil.*]

The State tax commission, from the reports hereinafter required to be made and from such other information as it may obtain, shall determine the fair market value of all oil produced in this State by any person, firm, corporation, or association from the date this act goes into effect until the day on which the first report is required to be made and thereafter from the day on which the last report was made until the day when the next report is required to be made. The State tax commission shall determine the fair market value of all oil produced in any county in this State and shall certify such value to the county court clerk within 10 days after such value has been finally ascertained. (Approved May 2, 1917.)

[*Sec. 3. Hearing.*]

It shall be the duty of the State tax commission, immediately after fixing such value, to notify the person, firm, corporation, or association of the fact, and such person, firm, corporation, or association shall have 10 days from the time of receiving notice to go before said commission and ask a change of the valuation and may introduce evidence, and said commission is authorized to summon and swear witnesses, and after hearing such evidence the commission may change the valuation as it may deem proper and the action of the commission shall be final. (Ibid.)

ACT OF MAY 14, 1892

CH. 100, CARROLL'S KENTUCKY STATUTES, 1930, P. 2013, TITLE, "PETROLEUM, NATURAL-GAS, AND SALT-WATER WELLS"

Sec. 3910. Person not using well to close it so as to prevent waste.

That from and after the passage of this act any person or corporation, and each and every one of them in possession, whether as owner, lessee, agent, or manager of any well in which petroleum,

natural gas, or salt water has been found, shall, unless said product is sooner utilized within a reasonable time, not, however, exceeding three months from the completion of said well, in order to prevent said product wasting by escape, shut in and confine the same in said well until such time as it shall be utilized: *Provided, however,* That this section shall not apply to gas escaping from any well while it is being operated as an oil well or while it is used for fresh or mineral water.

NOTE.—Held constitutional, and to prohibit excessive burning of gas in a lampblack factory some distance from the well: *Commonwealth* v. *Trent,* 117 Ky. 34, 77 S. W. 390 (1903).

A civil action for injunction against the same waste was sustained in *Louisville Gas Co.* v. *Kentucky Heating Co.,* 117 Ky. 71, 77 S. W. 368, 70 L. R. A. 558 (1903).

The same facts were also involved in *Louisville Gas Co.* v. *Kentucky Heating Co.,* 132 Ky. 435, 111 S. W. 374 (1908), in which plaintiff was refused damages on account of gas withdrawn by the defendant's wasteful use.

See also Calor Oil & Gas Co. *v.* Franzell, 128 Ky. 715, 109 S. W. 328 (1908), cited under "omitted statutes."

Sec. 3911. How abandoned wells to be closed.

That whenever any well shall have been put down for the purpose of drilling or exploring for oil, gas, or salt water, upon abandoning or ceasing to operate the same, the person or corporation in possession as aforesaid shall, for the purpose of excluding all fresh water from the gas-bearing rock, and before drawing the casing, fill up the well with sand or rock sediment to a depth of at least 20 feet above the rock which holds the oil, gas, or salt water, and drive a round, seasoned wooden plug, at least 3 feet in length, equal in diameter to the diameter of the well below the casing, to a point at least 5 feet below the bottom of the casing; and immediately after drawing the casing, shall drive a round, seasoned wooden plug, at a point just below where the lower end of the casing rests, which plug shall be at least 3 feet in length, tapering in form, and of the same diameter, at the distance of 18 inches from the smaller end, as the diameter of the hole below the point at which it is to be driven. After the plug has been properly driven there shall be filled on top of the same, sand or rock sediment to the depth of at least 5 feet.

NOTE.—Held superseded by sec. 3914 (a) in *Palmer Corporation* v. *Collins,* 214 Ky. 838, 284 S. W. 95 (1926).

Sec. 3912. Penalty for violation of provisions of this law.

Any person or corporation who shall violate any of the provisions of sections 3910 or 3911, shall be liable to a penalty of $100 for each and every violation thereof, and to the further penalty of $100 for each 30 days during which said violation shall continue; and all

such penalties shall be recovered, with cost of suit, in a civil action or actions, in the name of the State, for the use of the county in which the well shall be located.

NOTE.—(Acts 1891–1893, p. 60, 61, sec. 3.) Conviction under this section was sustained in *Commonwealth* v. *Trent,* 117 Ky. 34, 77 S. W. 390 (1903).

Sec. 3913. Who, besides owner, may close abandoned well.

Whenever any person or corporation in possession of any well in which oil, gas, or salt water has been found shall fail to comply with the provisions of section 3910, any person or corporation lawfully in possession of lands situate adjacent to or in the neighborhood of said well, may enter upon the lands upon which said well is situated, and take possession of said well from which oil, gas, or salt water is allowed to escape or waste in violation of said section 3910, and tube and pack said well, and shut in said oil, gas, or salt water, and may maintain a civil action in any court of this State against the owner, lessee, agent, or manager of said well, and each and every one of them, jointly and severally, to recover the cost thereof. This shall be in addition to the penalties provided by section 3912.

Sec. 3914. Person, not owner, closing well may recover costs of owner.

Whenever any person or corporation shall abandon any well, and shall fail to comply with section 3911, any person or corporation lawfully in possession of lands adjacent to or in the neighborhood of said well may enter upon the land upon which said well is situated, and take possession of said well, and plug the same in the manner provided by section 3911, and may maintain a civil action in any court of this State against the owner or person abandoning said well, and every one of them, jointly and severally, to recover the cost thereof. This shall be in addition to the penalties provided by section 3912: *Provided,* This section shall not apply to persons owning the lands on which said well or wells are situated and drilled by other parties; and in case the person or corporation drilling said well or wells is insolvent, then, in that event, any person or corporation in possession of lands adjacent to or in the neighborhood of said well or wells, may enter upon the land upon which said well or wells are situated, and take possession of said well or wells, and plug the same in the manner provided for in section 3911 at their own expense.

Sec. 3914a. Abandoned oil or gas well to be closed; penalty.

It shall be unlawful for any person or persons, corporations, or companies to abandon any oil or gas wells, either dry or producing

in this Commonwealth, or to remove casings therefrom, whether same be either oil or gas, either producing or dry, or for any cause abandon said well or wells without first plugging same in a secure manner by placing a plug of pine, poplar, or some other material which will prevent said well from becoming flooded, said plug to be placed above the oil-producing sand or sands, and filled in above for the distance of 7 feet with sediment or clay and placing upon same another plug of similar material as that of the first and also placing about 10 feet below the said casing another plug of like material as above referred to, 7 feet of sediment or clay, and then another plug, all plugs to be securely driven in so that no water can pass the same, before the casing is removed.

Any person or persons, corporations, or companies refusing or failing to comply with the foregoing provisions as provided for in section 1 herein, shall, on conviction, be fined in any sum not less than $100 or not more than $1,000, in the discretion of the jury.

All acts or parts of acts in conflict herewith are hereby repealed.

NOTE.—Conviction sustained: *Held*, it was not necessary to allege or prove that casing had been drawn, the question of abandonment being one for determination by the jury from all the evidence. *Seaboard Oil Co.* v. *Commonwealth*, 193 Ky. 629, 237 S. W. 48 (1922).

Held, that this section superseded sec. 3911. The plugging provisions were sustained. *Palmer Corporation* v. *Collins*, 214 Ky. 838, 284 S. W. 95 (1926).

ACT OF MARCH 18, 1920

CH. 93A, CARROLL'S KENTUCKY STATS., 1930, P. 1968

Sec. 3766b–1a. Acceptance of oil or gas; delivery to order of consignor.

That all persons, firms, corporations, and associations engaged in the business of transporting crude petroleum or gas by pipe line as a common carrier, may accept for transportation such oil or gas as is offered to it for that purpose from the party or parties in possession, and shall redeliver the same upon the order of the consignor unless prevented by an order of some court of competent jurisdiction, and such delivery shall be made without liability on the part of such carrier to the true owner out of possession except from the time such order of court is served upon it in the same manner that summons is now required to be in civil actions. (Approved March 18, 1920, ch. 23, p. 109, sec. 1.)

Sec. 3766b–1b. Pipe-line companies common carriers.

Every company or corporation receiving, transporting, or delivering a supply of oil or natural gas for public consumption is hereby declared to be a common carrier, and the receipt, transportation, and delivery of natural gas into, through, and from a pipe line operated by any such company is declared to be a public use. (Approved March, 1920, ch. 131, p. 613, sec. 1.)

Sec. 3766b–2b. Connection with other lines.

It shall be the duty of each and every company engaged in the receipt, transportation, or delivery of oil or natural gas for public consumption at all reasonable times to receive, for transportation and delivery, from such pipes as may be connected up with any main or tributary line, all gas that may be held and stored or ready for delivery: *Provided, however*, That said main or tributary line has the means or capacity to so receive, transport, or deliver such oil or gas as is offered. (Ibid., sec. 2.)

Sec. 3766b–3b. Acceptance of part of offerings.

In the event that any main line or tributary thereto, or both, is operating and transporting to such capacity as that it is impossible or impracticable to receive or transport all offered oil or gas where connections exist, then it shall be the duty of the operating company to receive and transport offered oil or gas in equal proportions, using the daily productive quantity of each producing person or company so offering gas as the basis of proportion. (Ibid., sec. 3)

Sec. 3766b–4b. Penalty for violations.

Any willful refusal or failure to receive, transport, and deliver oil or gas in the manner set out above, shall be deemed a misdemeanor, and upon conviction the company so failing or refusing shall be fined not less than $100 nor more than $500, and each day's willful failure or refusal shall be deemed to be a separate offense, and in addition said failing or refusing company shall be liable in damages to the injured party. (Ibid., sec. 4.)

Sec. 3766b–5b. Effective date.

This law to become effective upon its passage and approval and in due course of law. (Ibid., sec. 5.)

Secs. 3766b–1c to 3766b–6c.

Omitted; relate to obligations of lessee to lessor.

ANNOTATIONS TO OMITTED STATUTES:

SEC. 3766. (a) This statute granted a right of eminent domain to companies, owners of gas and oil wells, for the purpose of piping their products to market. Its constitutionality was sustained in *Paine's Guardian* v. *Calor Oil and Gas Co.*,

103 S. W. 309, 31 Ky. 754, 11 L. R. A. (U. S.) 727. In *Calor Oil and Gas Co.* v. *Franzell*, 128 Ky. 715, 109 S. W. 328 (1908), the company sued to condemn property upon which the Kentucky Heating Co. held a lease. The heating company in a cross-action sued to enjoin the laying of pipe. It was held that the statute was valid and that the fact that the Calor Co.'s piping of gas depleted the reservoir which supplied the heating company did not constitute a cause of action for an injunction. The case was remanded for a new trial on finding that the condemnation damages fixed by the jury were excessive.

STATE OF LOUISIANA

Constitution, 1921, Article VI, section 1

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Published January 1, 1928 191

STATE OF LOUISIANA

CONSTITUTIONAL PROVISION

The natural resources of the State shall be protected, conserved, and replenished; and for that purpose shall be placed under a department of conservation, which is hereby created and established. The department of conservation shall be directed and controlled by a commissioner of conservation, to be appointed as elsewhere provided in this constitution, who shall have and exercise such authority and power as may be prescribed by law. The legislature shall enact all laws necessary to protect, conserve, and replenish the natural resources of the State, and to prohibit and prevent the waste or any wasteful use thereof. (Constitution, 1921, Art. VI, sec. 1.)

STATUTES PROBABLY SUPERSEDED ALTHOUGH NOT SPECIFICALLY REPEALED

Act 71 of 1906.
Act 144 of 1908.
Act 172 of 1910.
Act 190 of 1910.
Act 254 of 1910.
Act 283 of 1910.
Act 127 of 1912.

ACT 268 OF 1918 (GAS)

An Act defining waste and making the waste or undue use of natural gas a misdemeanor; empowering the department of conservation with authority to prevent the use of natural gas in a manner calculated to threaten the common reservoir of natural gas with premature exhaustion, and charging the said department with the duty to regulate the method of taking natural gas from any well and the use of natural gas; empowering court proceedings to enforce the provisions of this act; requiring the sellers and users of natural gas in manufacturing enterprises to make full and complete report of the quantity of natural gas used by them to the department of conservation; requiring the said department to make semiannually a full and complete report to the governor by parishes of the natural gas being used within the State, the waste going on, and the situation as to the future supply of natural gas in the several parishes, and likewise make such report to the president of the police jury of each parish in which natural gas is produced; requiring the district judges of the several parishes wherein natural gas is produced to charge each grand jury with the duty of investigating the waste of natural gas, or the use being made of natural gas in a manner to threaten with premature exhaustion or extinction the common reservoir of such natural gas; and providing penalties for the violation of the provisions of this act. (Approved July 11, 1918; Louisiana Acts, 1918, p. 513.)

Definition and prevention of waste of natural gas.

SECTION 1. * * * That it shall be unlawful to permit the waste of natural gas, or to use natural gas for any purpose whatsoever in such manner as will threaten with premature exhaustion, extinction, or destruction the common supply or common reservoir from which said natural gas is drawn.

Waste defined.

SEC. 2. * * * That the term waste as above used in addition to its ordinary meaning, shall include:

(A) Wantonly or willfully permitting the escape of natural gas in commercial quantities into the open air.

(B) The intentional drowning with water of a gas stratum capable of producing gas in commercial quantities.

(C) Underground waste.

(D) Permitting of any natural gas well to wastefully burn.

Authority of department of conservation over gas—Duty to prevent waste and improper use, including taking in such quantity as threatens premature exhaustion of the common supply—Injunction authorized.

SEC. 3. * * * That the department of conservation is granted full power and authority to prevent the waste of natural gas, or the use of natural gas for any purpose whatsoever in such quantities as will threaten with premature exhaustion, extinction, or destruction the common supply or common reservoir from which said natural gas is drawn by preventing the flow during each 24 hours from any well of more than 25 per cent of the potential capacity thereof, and it is made the imperative duty of the said department of conservation to make frequent inspection and investigation of the natural-gas fields of the State so as to carry out the provisions of this act; and if any waste or use of natural gas in quantities to threaten with premature exhaustion, extinction or destruction the common reservoir from which the natural gas is being drawn is found to exist, as waste and the undue use of natural gas has heretofore been defined, the said department shall proceed at once to prevent or stop the waste or improper use of such natural gas; and to carry out the provisions of this act and existing laws the department of conservation is empowered to sue out an injunction without giving bond in any of the district courts of the State to prevent and prohibit the said waste of natural gas or the use or manner of use of natural gas in such quantities as to threaten with premature exhaustion, extinction, or destruction the common source or reservoir from which said natural gas is being drawn as waste, and the undue use of natural gas has heretofore been defined; and in all such proceedings it shall be the duty of the attorney general of Louisiana to appear in behalf of said department, which injunction shall not be dissolved on bond.

Authority to regulate pumps, etc.

SEC. 4. * * * That there is hereby granted to and vested in the department of conservation the power to regulate the use of pumps, compressors, and other artificial or injurious means of increasing the natural flow.

SECS. 5 and 6 omitted; make provision for semiannual reports.

Grand juries to be charged to inquire into gas waste.

SEC. 7. * * * That it shall be the duty of the district judges in those parishes wherein natural gas is produced or found, to charge the grand juries to inquire into the waste of natural gas, or the use being made of natural gas for any purpose whatsoever that is threatening with premature exhaustion, extinction, or destruction the common source or reservoir from which said natural gas is being drawn, as waste and the undue use of natural gas has heretofore been defined.

Section 8 provides for a penalty for violation of the law.

Extent of repeal of existing laws.

SEC. 9. * * * That this act shall not repeal the existing laws on this same subject matter unless the same are inconsistent with the provisions of this act.

ACT 270 OF 1918 (GAS)

AN ACT looking to the conservation of natural gas in the State; regulating the drilling for natural gas, its extraction from the earth, and marketing; making persons, firms, or corporations engaged in the business of purchasing and selling natural gas in the State common purchasers from all and regulating the manner of such purchase without discrimination, excepting municipal corporations and the pipe lines and distribution systems of corporations the direct ownership of which may revert to any municipality; regulating the method of measuring gas so produced and purchased; conferring upon the conservation commission of Louisiana certain powers with reference to such boring, extraction, purchase, and sale of such natural gas; charging said commission with the enforcement of this act; charging district attorneys with the duty of bringing necessary suits to enforce this act with injunction to be issued without bond, fixing

penalties, etc.; providing penalties for the violation of this act and to repeal all laws or parts of laws in conflict with the provisions of this act. (Approved July 11, 1918; Acts, 1918, p. 516.)

Proportionate production of natural gas marketable without waste.

SECTION 1. * * * That in order to further conserve the natural gas in the State of Louisiana, whenever the full production from any common source of supply of natural gas in this State is in excess of the market demands, then any person, firm, or corporation having the right to drill into and produce gas from any such common source of supply, may take therefrom only such proportion of the natural gas that may be marketed without waste, as the natural flow of the well or wells owned or controlled by any such person, firm, or corporation bears to the total natural flow of such common source of supply, having due regard to the acreage drained by each well, so as to prevent any such person, firm, or corporation securing any unfair proportion of the gas therefrom: *Provided*, That the Conservation Commission of Louisiana may by proper order permit the taking of a greater amount whenever it shall deem such taking reasonable or equitable.

Purchaser shall be common purchaser without discrimination—Pro rata purchasing—Owner refusing to sell—Right of action by common purchaser.

SEC. 2. * * * That every person, firm, or corporation, now or hereafter engaged in the business of purchasing and selling natural gas in this State shall be common purchaser thereof, and shall purchase all of the natural gas which may be offered for sale which may be brought in pipes and connecting lines by the owner or proposed seller to its trunk lines, at the seller's expense, or to its gathering lines, without discrimination in favor of one producer as against another or in favor of any one source of supply as against another, save as authorized by the Conservation Commission of Louisiana after due notice and hearing, but if any such person, firm, or corporation shall be unable to purchase all the gas so offered, then it shall purchase natural gas from each producer ratably, and any common purchaser of gas shall have the same right to purchase the product of any gas well or wells that are not being utilized under the conditions of this act; and in the event the owner of said well or wells refuses to sell, the common purchaser shall have the same rights of action against such owner or owners as the seller has against the common purchaser who refuses to buy, and the seller so refusing to sell shall be subject to the same penalties, etc., provided against the common purchaser who refuses to buy. This act shall not affect in any way a municipal corporation engaged in buying and selling natural gas or any corporation that builds or maintains a pipe line or distribution system for the purchase and sale of natural gas, the direct ownership of which shall vest in or which may under charter or franchise provisions ultimately vest in or be acquired by any municipality.

Discrimination between grades and pressures forbidden.

SEC. 3. * * * That no common purchaser shall discriminate between like grades and pressures of natural gas, or in favor of its own production or of production in which it may be directly or indirectly interested, either in whole or in part, but for the purpose of prorating the natural gas to be marketed, such production shall be treated in like manner as that of any other producer or person, and shall be taken only in the ratable proportion such production bears to the total production available for marketing.

SEC. 4. * * * That all gas produced from the deposits of this State when sold shall be measured by meter and the Conservation Commission of Louisiana shall, upon notice and hearing, relieve any common purchaser from purchasing gas of an inferior quality or grade, and the commission shall from time to time make such regulations for delivery, metering, and equitable purchase and taking as conditions may necessitate.

SEC. 5. * * * That it shall be the duty of the Conservation Commission of Louisiana to see that the provisions of this act are fully and properly complied with and it shall be further the duty of the district attorney, in whose district any violation takes place, on applications of the Conservation Commission of Louisiana, to bring such suit or suits as may be necessary to enforce the provisions of this act, and any injunction which may be necessary shall be furnished without bond.

Penalty for violation.

SEC. 6. * * * That any person, firm, or corporation or partnership violating any of the provisions of this act shall be guilty of a misdemeanor and on conviction thereof in any court of competent jurisdiction be liable and fined not less than $50 nor more than $500 or be subject to imprisonment for 30 days, or be liable to both fine and imprisonment, in the discretion of the court, for each offense; each day's continuation of such violation shall be and is hereby declared to be a separate offense.

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Repeal of prior laws.

SEC. 7. * * * That all laws or parts of laws in conflict herewith be, and the same are hereby, repealed.

ACT 73 OF 1920 (OIL)

APPROVED JULY 6, 1920; ACTS OF 1920, P. 88

AN ACT to conserve the oil resources of the State and to secure to each party entitled thereto an opportunity to sell his fair share of the oil produced in a common pool and to such end to prevent any person, firm, association of persons, or corporation engaged in the business of purchasing crude petroleum from the producer from discriminating in such purchases during a condition of overproduction; vesting the commissioner of conservation of Louisiana with jurisdiction to appoint a supervisor for such field while such condition continues, with authority to make rules and regulations governing such purchases, and likewise conferring on said commissioner jurisdiction to exercise the other powers hereby vested in it; making violation of any order of the commissioner or of any rule or regulation of such supervisor legally issued hereunder a misdemeanor and providing penalties therefor.

Proportionate marketing of petroleum during period of overproduction—Discrimination forbidden—Selling by producer voluntary and storage permitted—Exceptions.

SECTION 1. Be it enacted by the General Assembly of the State of Louisiana, that during a period of overproduction in any oil field, it shall be the duty of the buying agencies to accord to each producer an opportunity to sell that proportion of the oil, taken by such buying agencies, as the potential production of oil from the wells of such producer bears to the potential production thereof from all the wells in such field. However, nothing in this act shall be construed as compelling the owner of any pipe line to construct a pipe line for the purpose of reaching the well of any producer. In providing for the amount of oil to fill their requirements such buying agencies shall not take any larger percentage of the potential production of themselves, or of persons affiliated with them or under the same management or control, than they offer to purchase of the potential production of other producers: *Provided*, That nothing herein is intended to compel any buying agency to purchase oil in larger quantities or at a higher price than it desires, or to compel any producer to sell unless he shall wish to do so, or prevent any producer from storing oil by him produced, if he desires, but the amount so stored shall be deducted from the ratable share which such producer may require purchasing agencies to take under the provisions of this act.

Persons not within scope of act.

SEC. 2. * * * That the provisions of this act shall not apply to any purchaser buying oil in quantities of less than 500 barrels per day and who transports such oil through his own facilities.

Selection of supervisor and assistants during period of overproduction—Authority and duties of supervisor—Acts subject to review.

SEC. 3. * * * That upon a presentation in writing and under oath by any person to the conservation commission of Louisiana that there exists a condition of overproduction in any oil field in this State, said commissioner shall hold a public hearing thereon after two days' notice of such hearing published in two daily newspapers that are published nearest the oil field affected and by notice posted on the courthouse door of the parish in which such oil field is located. If the commissioner shall determine at such hearing that there does exist such condition, he shall appoint a supervisor to serve in such field during the period of overproduction. If those producing oil in such field and the buying agencies therein or a large part of both such producers and buying agencies shall unite in a recommendation to said commissioner for the appointment as supervisor of a citizen of this State, and also give to such commissioner assurances to him satisfactory for the payment of the salaries and expenses of such supervisor and his assistants, then the commissioner shall appoint as supervisor the party so recommended, if in the judgment of said commissioner he be competent and trustworthy. Except as stated the commissioner shall have absolute discretion in the selection of such supervisor and in the fixing of his salary at any sum not to exceed $500 per month. Unless paid in the manner above indicated the salaries and expenses of the supervisor and his assistants shall be paid by the commissioner of conservation. The said commissioner shall also have power to remove any such supervisor and appoint his successor whenever he may deem such to be advisable. It shall be the duty of said supervisor, whenever he may think it to be necessary or the commissioner may order, to ascertain, by actual gage or otherwise, the amount of the potential production from the wells drilled and the quantities of oil which the buying agencies will from time to time take therefrom to fill their requirements, and to prescribe rules and regulations so as to accord to each producer an opportunity to sell his ratable share of such requirements on the basis as specified in section 1 above. Subject to review, modification, amendment, or annulment as hereinafter provided, all the producers

of oil in such field and the agencies buying oil therein shall comply with and observe such rules and regulations under the penalties for violation thereof as later herein stated.

Assistants, their duties and compensation—Extent of authority.

SEC. 4. * * * That the supervisor may employ such assistants, clerical or otherwise, as may be necessary to the discharge of his duties, and fix their compensation, subject to approval of the conservation commission. In the discharge of his duties the supervisor and his assistants shall have the right to enter upon any lease or other property of any producer in the oil field, and have such control over such property, machinery, and appliances as may be requisite to gage the wells; and also shall have the right to examine any books, papers, or accounts of any oil producer relative to his production, operation, and sales; and of any buying agency relative to the latter's operations as such.

Acts of supervisor subject to review by commissioner—Procedure.

SEC. 5. * * * That all acts of the supervisor and the rules and regulations by him prescribed shall be subject to amendment, change, modification, or annulment by said commissioner upon hearing after such reasonable notice as he may prescribe. Jurisdiction is conferred upon the district courts of this State to review every action or decision of such commissioner, and the reasonableness of any order, rule, or regulation prescribed or approved by him, except the action of the commissioner in appointing a supervisor as provided in section 3 herein, and rules and regulations prescribed by such supervisor shall not be suspended until set aside by the commissioner or said court. Such review may be had at the instance of any person having an interest in the matter to be reviewed, in the manner and with the same effect as is now or may hereafter be allowed in suits to annul orders of said commissioner in other matters over which he has jurisdiction.

Violation a misdemeanor—Penalty.

SEC. 6. * * * That if any person shall wilfully violate any order, rule, or regulation made or provided by said commissioner or supervisor or of such court of competent jurisdiction unless stayed or suspended he shall be guilty of a misdemeanor, and shall be fined not less than $100 nor more than $1,000 for each offense, and shall forfeit and pay to the State of Louisiana, not less than

$100 nor more than $1,000 for each day's violation, to be recovered in any court of competent jurisdiction at the suit of the State.

Words and phrases.

SEC. 7. * * * That as herein used the words "potential production" means the amount of petroleum which can be and is actually produced from the wells in the oil fields when operated to their full capacity for a reasonable test period not to exceed five consecutive days; "overproduction" means that the potential production is in excess of the quantity of oil being taken care of in the oil field; "persons" includes all individuals, partnerships, associations of persons, and corporations; "producers" includes the lessee or other operator of oil wells, or owner of oil as produced from the well, and also the owner of the royalty therefrom; and "buying agencies" embraces all persons engaged in the business of purchasing oil from the producer, provided that the purchasing by a producer merely of the royalty on his production shall not make such producer a buying agency.

Intent of act.

SEC. 8. * * * That this law is designed through its operation during a period of overproduction to conserve the oil, as is manifestly to the public interest, and to provide means whereby all of the producers may have a reasonable opportunity to sell their fair proportion of the market's requirements, and it shall be construed to effectuate these purposes.

Constitutionality—Any portion of act held unconstitutional not to affect remaining portion.

SEC. 9. * * * That if section 2, or any provision thereof, or if any other section or provision or part of any other section be declared unconstitutional or void for any reason, such holding shall not invalidate any other provision or section of this act, and all provisions of any section of this act which are constitutional and valid shall remain in full force and effect.

ACT 250 OF 1920

APPROVED JULY 8, 1920; ACTS, 1920, P. 481

AN ACT granting to the department of conservation, created by laws of Louisiana, greater power and authority in the work of conserving the crude petroleum, natural gas, and mineral substances mined or produced in the State of Louisiana; giving to the department of conservation power and authority to

adopt and promulgate, amend, and readopt rules and regulations for the drilling, development, sinking, deepening, and abandonment of natural gas and oil wells, and to promulgate rules and regulations for the opening and operation of all mines in the State of Louisiana; and to prescribe rules and regulations regulating the production and use of natural gas, and requiring that the gasoline contained in the natural gas used by carbon plants be extracted and saved before such gas be utilized for the making of carbon; empowering and authorizing the department of conservation to take charge of, control, or securely cap or plug any natural-gas well or oil well wasting oil or gas and not in control; providing for proceedings in the exercise of this authority; and giving a lien and privilege in favor of the department of conservation for all reasonable expenses and costs incurred by it, or under its authority, in the closing, capping, or plugging of any such uncontrolled or wild well, and extending this lien and privilege to all leases, property, and equipment owned by the company, firm, or individual owning such wild well, and defining the word "waste" as used in this act; and requiring persons, associations, and corporations mining, drilling, or operating oil or gas wells or mines to report to the department of conservation from time to time on the output of such well or mines; prescribing penalties for the violation of this act and the rules and regulations of the department of conservation adopted pursuant hereto; and limiting the amount of fine or term of imprisonment that may be imposed; authorizing and empowering the department of conservation to resort to courts for legal, equitable, or criminal process to compel obedience and compliance with its rules and regulations; and to enforce any of the provisions of this act; authorizing the department of conservation to appeal from any judgment or decree against it, or any order restraining the department in the exercise of its authority; granting the right to appeal to any person, association, or corporation from any judgment, order, or mandate of the department of conservation directed against it; and authorizing the determination of the reasonableness of the orders, rules, and regulations of the department of conservation in any court of competent jurisdiction at the timely instance of any party affected thereby and conferring jurisdiction therefor; making it the duty of the attorney general, on request, to represent the department of conservation, and authorizing the appointment of a district attorney to appear instead of the attorney general, under certain conditions; declaring all legal proceedings hereunder to be preference matters entitled to summary trial and disposition in courts of competent jurisdiction; providing for appropriations of funds necessary for the enforcement of this act, and regulating the issuance of injunctions restraining the department of conservation in its control of wild gas wells and providing for injunction bonds therewith. (Approved July 8, 1920; Acts, 1920, p. 481)

Additional powers granted to department of conservation.

SECTION 1. * * * That the department of conservation, created by the laws of the State of Louisiana, acting through the commissioner of conservation, is hereby empowered and directed to adopt and promulgate, pursuant to the provisions of the constitution and the laws of the State of Louisiana and of this act, such rules and regulations as said department may deem necessary for the conservation of the crude petroleum, natural gas, and mineral substances produced in the State of Louisiana, and to provide rules and regulations for the drilling, development, sinking, deepening, abandonment,

and operation of oil wells, gas wells, and mines for the purpose of conserving the products produced therefrom, and to prevent the waste of such products, and to require persons, associations, and corporations mining, drilling, or operating such wells or mines to report to it from time to time on the output of the wells or mines being operated by them.

Carbon black—Natural gas employed in manufacture shall first have gasoline extracted—Provision for regulations.

SEC. 2. * * * That the department of conservation is authorized by the grant of power in this act to prescribe rules and regulations requiring that the gasoline contained in natural gas used by carbon plants be extracted and saved before such gas be utilized for the making of carbon, where such gas contains sufficient gasoline to make the extraction thereof beneficial or profitable.

Same—Department of conservation to regulate use of natural gas in manufacture.

SEC. 3. * * * That the department of conservation be, and it is hereby, given supervision over the production and use of natural gas in connection with the manufacture of carbon black, in other manufacturing enterprises, and for domestic consumption; and that power and authority is hereby granted to the department of conservation to prepare and promulgate all necessary and reasonable rules and regulations providing for the conservation of natural gas produced for and used in plants manufacturing carbon black, in other manufacturing enterprises, and for domestic consumption; hereby especially granting to the department of conservation the power to limit the amount of gas which may be withdrawn from all the gas wells in any particular gas field or area to a percentage of the potential capacity of such gas wells as may be reasonably necessary to conserve and safeguard an adequate supply of natural gas.

Wild oil and gas wells—Resulting waste—Department of conservation to make rules concerning.

SEC. 4. * * * That in order to further protect the natural gas fields and oil fields in this State it is hereby declared to be unlawful, and the department of conservation shall have the authority to adopt rules and regulations making it unlawful and declaring it to be a nuisance for any person, firm, association, or corporation to negligently permit any natural gas well or oil well to go wild or waste or to become uncontrollable or wasteful, and to provide that the owner or person in possession of any wild, uncontrolled, or wasteful natural gas well or oil well shall, after five days' written notice given to such

owner or proprietor or person in possession by the department of conservation or its agent, be required to make every reasonable and diligent effort to close such well and securely cap or plug it in accordance with the rules and regulations established by the department of conservation.

That in the event of the failure of the owner or party in possession of said wild or uncontrolled natural-gas well or oil well, within five days after service of the notice above provided for, to begin in good faith the work of closing, capping, or plugging said wild or uncontrolled well, and to diligently and skillfully prosecute such work, then the department of conservation shall have the superior right to enter into the actual possession and control of the said well and to take charge of the work of closing said wild or uncontrolled natural-gas well or oil well, and it shall have the right to proceed, through its own agents or by contract with a responsible contractor, to close or plug the said wild or uncontrolled well, or otherwise prevent the wasteful escape or wasteful loss of natural gas or oil from such well, all at the reasonable expense of the owner or proprietor thereof; and in order to secure to the department of conservation the reasonable cost and expense of closing, capping, or plugging such wild well, the possession of the same with sufficient ground adjacent thereto belonging to such owner or proprietor, with the rents, revenues, and incomes therefrom, shall be retained by the department of conservation until the full and final payment of such costs and expense incurred shall be repaid to the department of conservation or the contractor, and when such owner or proprietor or person in possession of such well shall pay such costs or expenses to the department of conservation, less the revenues, rents, and income derived therefrom by the department of conservation, while same was in the possession of said department, the department of conservation shall, after such well is brought under control, restore possession of said well to the owner: *Provided*, That in the event rents, revenues, and income shall not be sufficient to reimburse the department of conservation, as provided for in this section, then and in that event the cost and expense of closing or plugging said wild or uncontrolled or wasteful natural gas well or oil wells shall operate as a lien or privilege in favor of the department of conservation upon all of the property of the owner or proprietor of said wild well, except such as is exempt by law, and the department of conservation shall proceed to enforce said lien and privilege by suit before any court of competent jurisdiction, the same as any other like civil action, and the judgment so obtained shall be executed in the same manner now provided by law for execution of judgments. Any excess over the amount due the department of conservation which the property seized and sold may bring, after payment of court costs, shall be paid over to the owner of said wild or uncontrolled well.

Waste—Scope of term in act.

SEC. 5. * * * That the term "waste" as used in this act, in addition to its ordinary meaning, shall include underground waste, surface waste, or any unreasonable waste or leakage in the production of crude petroleum, natural gas, or other minerals.

Appearance in court permitted department of conservation—Authorized to enforce rules and regulations.

SEC. 6. * * * That the department of conservation shall have the right to appear in court, through its chief officer or other designated agent, or subordinate officer, duly designated by the chief officer to enforce rules and regulations and any provision of this act by civil or criminal process before any court in the State of Louisiana of competent jurisdiction.

Any corporation, partnership, association, or individual who shall willfully violate any provision or any rule or regulation adopted by the department of conservation, pursuant hereto, upon conviction thereof by any court of competent jurisdiction shall be deemed guilty of a misdemeanor and may be fined not less than $50 nor more than $1,500 or suffer imprisonment for not more than fifteen (15) days in the parish jail, or both, at the discretion of the court.

Resort to State courts to enforce provisions of act authorized—Right of appeal.

SEC. 7. * * * That the department of conservation shall have the right and power to resort to the courts and through the courts make use of writs of injunction, mandamus, or any lawful process to compel the obedience and compliance with the rules and regulations adopted by it pursuant to the authority of this act, and to enforce any provisions of this act, all without giving bond for the payment of costs. That the right of appeal is hereby granted to the department of conservation to any court of competent appellate jurisdiction, from any judgment or decree or order restraining the department of conservation from exercising the authority given in this act or the rules and regulations adopted pursuant to same, said appeal or appeals to be prosecuted without giving bond for payment of costs.

No injunction may be issued by any court, to restrain the department of conservation, or any of its agents, officers, or employees from carrying out the provisions of section 4 of this act, except upon rule, after not less than three days' notice and on the trial of such rule,

which shall be summary, the defendant shall be allowed to introduce evidence to rebut the allegations of the petition, with the right on the part of the plaintiff also to offer evidence; and the injunction should not thereafter issue unless the court shall be satisfied from the evidence submitted, that the plaintiff has made out a prima facie case, and in the order for such injunction, the court shall fix the amount of bond to be furnished by the plaintiff.

Right of petition objecting to any order of department of conservation.

SEC. 8. * * * That if any company, corporation, partnership, or individual engaged in the use of natural gas in any manufacturing or industrial enterprise or engaged in the production of or discovery of natural gas or oil, and placed under the supervision of the department of conservation by the terms of this act, shall be dissatisfied with any order, rule, or regulation prepared and promulgated by the department of conservation under the authority granted under this act, such company, corporation, partnership, or individual may, within three months after any such order, rule, or regulation is made and become effective by the department of conservation, and not thereafter, file in a court of competent jurisdiction, at the domicile of the complainant, or the department of conservation, or in any parish where the said action arose, a petition setting forth therein the particular cause or causes of objection to the order, rule, or regulation of said department of conservation so complained of.

All such cases shall be tried in the same manner, subject to the same legal writs and processes, as civil cases (and shall be given precedence over all other civil cases in the said court), and shall be heard and determined as speedily as possible. Any such court shall have the power and authority to affirm the order, rule, or regulation of said department of conservation so complained of or to change, modify, alter, or set aside the same, as justice may require; provided, that in all cases wherein the enforcement of the said rule or regulation of the said department of conservation shall be sought to be enjoined or restrained, such injunction or restraining order shall issue upon the party seeking the same giving such bond, to be executed in favor of the department of conservation in such amount and with such surety as the court shall direct.

Appeals from judgments.

SEC. 9. * * * That all civil or criminal prosecutions instituted in the courts of this State by the department of conservation or under its direction and authority, and all appeals prosecuted from judgments adverse to the contention of the department of conservation, and all appeals taken from the orders and mandates of the department of conservation, shall be tried summarily, as the practice in the courts of Louisiana permit, and by preference in said courts.

Attorney general or district attorney to represent in court department of conservation.

SEC. 10. * * * That it is hereby made the duty of the attorney general to represent the department of conservation, whenever requested by it, in any of the courts of this State, but the attorney general may direct a district attorney to appear in his place and stead in any case the department of conservation moves to or institutes before a court, within the judicial district where said district attorney resides.

Rules and regulations—Power to amend, readopt, and prescribe.

SEC. 11. * * * That the department of conservation acting through the commissioner of conservation, shall have power to amend, readopt, and prescribe new rules and regulations, from time to time, whenever in the judgment of the said department the same are necessary.

Funds for enforcement of act.

SEC. 12. * * * That the funds necessary for the enforcement of this act be appropriated from funds derived from the license imposed on the business of severing natural resources, as the legislature may appropriate or otherwise provide.

When act takes effect—Laws in conflict repealed.

SEC. 13. * * * That this act shall take effect from and after its passage and promulgation, and that all laws in conflict herewith are hereby repealed.

ACT 91 OF 1922 (GAS)

APPROVED JULY 13, 1922; ACTS, 1922, P. 170

AN ACT to regulate and control the use of natural gas in the manufacture of carbon black, and to prescribe penalties for the violation of this act. (Approved July 13, 1922; Acts, 1922, p. 170.)

Natural gas—Regulation of use in manufacture of carbon black.

SECTION 1. Be it enacted by the Legislature of Louisiana, that natural gas may be used in the manufacture of carbon black under the conditions as fixed and imposed by the provisions of this act.

Commissioner of conservation to determine what percentage of gas may be employed.

SEC. 2. * * * That the commissioner of conservation is authorized, directed, and empowered to fix and determine on the 1st day of October, 1922, and semiannually thereafter, what percentage of consumption of natural gas produced by each gas well may be used in the manufacture of carbon black, said percentage of consumption to be based upon the potential capacity of such gas well, and which percentage shall not be less than 15 per cent and not more than 20 per cent of the potential capacity of such well: *Provided*, That in fixing such basis of consumption the same rule, as far as possible, shall be applied to all gas wells in any producing gas area: *And provided further*, That the percentage of consumption may be increased in any particular well when the safety of such well may demand such increase.

NOTE 1.—In *State* v. *Thrift Oil & Gas Co.*, 162 La. 165, 110 So. 188 (1926), the defendant produced in excess of the quantity allowed by this act but less than 1,000,000 cubic feet per day. He was prosecuted under Act 252 of 1924, section 3, which allows a minimum of 1,000,000 cubic feet per day if back pressures will not thereby be reduced below 200 pounds. It was held that he was entitled to the exception provided by the 1924 act and that his conviction must be reversed.

NOTE 2.—In *State* v. *Carson Carbon Co.*, 162 La. 781, 111 So. 162 (1927), a conviction under Act 252 of 1924 was sustained. That act, section 3, provides that wells drilled before June 24, 1924, "shall be allowed to produce the same percentage of the open-flow capacity that such wells could produce under Act 91 of 1922."

The defendant produced in excess of the 20 per cent maximum fixed by Act 91 of 1922, but the bill of information did not allege that the gas was being used for manufacture of carbon black.

Held, That under the 1924 act "the defendant was forbidden to exceed the percentage of open-flow capacity allowed by the act of 1922 for the manufacture of carbon black or for any other purpose" and that production in excess thereof was a violation of the 1924 act.

Held, That the delegation of authority to the commissioner of conservation provided by this section was not in violation of section 1 of article 6 of the Louisiana constitution, requiring the legislature to enact all laws necessary to protect, conserve, and replenish the natural resources of the State, nor of section 2, article 2, of the same constitution, forbidding any person holding office in one of the three departments of the State government to exercise any power belonging to either of the other two departments. In fact, however, the defendant was charged with producing gas in excess of the 20 per cent maximum fixed by section 2, not by the commissioner, and the authority of the commissioner of conservation was, therefore, not involved. *State* v. *Carson Carbon Co.*, 162 La. 781, 111 So. 162 (1927).

Authority to reduce consumption of gas in manufacture of carbon black—When may be exercised.

SEC. 3. That the commissioner of conservation is authorized, empowered, directed, and required to reduce the consumption of natural gas used in the manufacture of carbon black below the minimum fixed in section 2 of this act, after promulgation for 60 days of an order to that effect, whenever it is actually necessary to do so in obtaining an adequate supply of natural gas for domestic heating and lighting purposes in the State of Louisiana, and for manufacturing plants, industries, and enterprises located and operated within the State of Louisiana, other than those engaged in the manufacture of carbon black: *Provided*, That the conditions set out in this section shall not become effective until such time as the establishment of factories, industrial plants, and enterprises, the construction of pipe lines in the State of Louisiana and domestic consumers in Louisiana, or any one of such shall provide a demand which necessitates the enforcement of the same.

Carbon black—In manufacture, gasoline to be first extracted.

SEC. 4. That no person, partnership, firm, corporation, or association of persons shall be permitted to use natural gas in the manufacture of carbon black without extracting and saving therefrom the gasoline contained therein: *Provided*, The amount of gasoline therein contained shall not be less than 150 gallons to the million cubic feet of gas, such content to be based on the amount of gasoline actually recoverable by modern extraction plants as generally operated: *And provided further*, That the commissioner of conservation may suspend the operation of this section in case of emergency.

Commissioner of conservation to adopt rules and regulations.

SEC. 5. That the commissioner of conservation is authorized, empowered, and directed to make, adopt, and promulgate orders, rules, and regulations, which in his judgment may be necessary for the proper carrying out of the provisions of this act.

Enforcement of act.

SEC. 6. That it shall be the duty of the commissioner of conservation to enforce the provisions of this act and the orders, rules, and regulations made, adopted, and promulgated by him.

State's department of justice to assist commissioner of conservation.

SEC. 7. It shall be the duty of the department of justice to represent said commissioner in the enforcement of the provisions of this act, and of the orders, rules, and regulations made, adopted, and promulgated by said commissioner of conservation.

Penalty for violation.

SEC. 8. That any person, partnership, firm, corporation, or association of persons violating any of the provisions of this act, or any rule, regulation, or order of the commissioner of conservation prescribed by authority of this act, shall be guilty of a misdemeanor and on conviction shall be punished by a fine of not less than $100 nor more than $500, in the discretion of the court, and each and every day in which any person, partnership, firm, corporation, or association of persons shall violate any of the provisions of this act, or any such rule, regulation, or order of the commissioner of conservation, shall constitute a separate offense hereunder and subject the offender to the penalty herein provided; and three convictions for violating any of the provisions of this act, or any such rule, regulation, or order of the commissioner of conservation, shall subject the offender to the forfeiture of the right to manufacture natural gas into carbon black, at the suit of the commissioner of conservation before a court having jurisdiction at the place where such offenses are committed, and the court may, in its discretion, decree such a forfeiture.

ACT 133 OF 1924

APPROVED JULY 12, 1924

AN ACT to protect all of the natural waterways and canals of the State against pollution by salt water, oil, and other substances, and also to protect the fish in said streams by draining or permitting the said water to be drained in said streams.

SECTION 1. Be it enacted by the Legislature of Louisiana, that it is hereby declared unlawful and a misdemeanor for any officer, manager, or employee of any corporation or any person acting for himself, or for any one else to knowingly or willfully empty or drain into or permit to be drained from any pumps, reservoir, wells, or oil fields into any of the natural streams of the said State, any oil, salt water, or noxious or poisonous gases or substances in quantities sufficient to destroy the fish in said streams.

SEC. 2. That the department of conservation shall have supervision of all drainage of salt water and other noxious substances into the natural streams of the State of Louisiana and any owner or operator of oil-producing property or oil tanks or reservoirs discharging salt water or any other noxious substances into the natural streams of this State in quantities sufficient to kill the fish therein, shall, when notified by the department of conservation, immediately impound such salt water or other noxious substances: *Provided*, That such salt water or other noxious substances so impounded may be released by permission of the said department of conservation.

SEC. 3. That for each and every violation of said act there shall be imposed upon any person so offending, whether acting in his individual capacity or for others, a fine not less than $100 nor more than $2,000, or imprisonment in the parish jail not less than 30 days nor more than 3 months at the discretion of the court trying the same.

SEC. 4. That each and every day that said oil, salt water, or other substances are permitted to flow into such streams, shall constitute a separate offense.

SEC. 5. That all laws and parts of laws in conflict herewith are hereby repealed.

ACT 134 OF 1924

Commissioner of conservation—Authority regarding mineral resources.

Be it enacted by the Legislature of Louisiana, that wherever in the laws prescribed for the severing and conservation of the mineral resources of the State a certain discretion is vested in the commissioner of conservation in the matter of issuing permits and making contracts and agreements for severing, the same shall not be exercised except on the approval of the attorney general and the governor. (Approved July 12, 1924.)

ACT 252 OF 1924 (GAS)

AN ACT to conserve the natural-gas resources of the State of Louisiana; to define the conditions under which natural gas can be burned into carbon black; to establish rules and regulations for the drilling for and the production of gas; to provide for the spacing of gas wells and to limit the percentage of the open-flow capacity of gas wells that may be taken from such wells and to fix the maximum percentage that may be taken from them; to give the commissioner of conservation of this State authority to make rules and regulations for the conservation of the natural-gas resources of the State; to make it a misdemeanor to violate any of the provisions of this act, and to provide penalties therefor; and to provide for bringing corporations into court in criminal prosecution under this act. (Became law by time limitation; see acts, 1924, p. 594.)

What constitutes waste of natural gas in Louisiana.

SECTION 1. Be it enacted by the Legislature of Louisiana, that natural gas shall not be produced in the State of Louisiana in such manner, and under such conditions as to constitute waste. The term "waste," as herein used, in addition to its ordinary meaning shall include: (*1*) Escape of gas in commercial quantities into the open air from a stratum recognized as a gas stratum, but it is not intended to have application to gas pockets in high points in a stratum recognized as an oil stratum; (*2*) drowning with water of a gas stratum capable of producing gas in commercial quantities; (*3*) underground waste; (*4*) wasteful burning of any gas well; (*5*) wasteful utilization of gas; (*6*) and allowing gas wells or pipe lines to leak or blow off.

Rules and regulations governing.

SEC. 2. The following rules and regulations shall be observed in drilling for, producing, taking, transporting, piping, and using gas in this State:

Drilling of gas wells—Permit required.

1. No gas well shall be drilled in this State without a written permit therefor from the commissioner of conservation designating the location of the proposed well.

Gas to be confined—Protection from infiltrating water.

2. Whenever natural gas in commercial quantities, or a gas-bearing stratum known to contain natural gas in such quantities is encountered in any well drilled for oil or gas in this State, such gas shall be confined to its original stratum until such time as the same can be produced and utilized without waste, and all such strata shall be adequately protected from infiltrating waters.

Prevention of waste generally, employing improved methods.

3. All operators, contractors, drillers, pipe-line companies, gas-distributing companies or individuals, drilling for or producing gas, or piping gas for any purpose, shall use every reasonable precaution in accordance with the most approved methods to stop and prevent waste of gas in drilling and producing operations, or distributing the same, and shall not wastefully utilize gas, or allow it to leak or escape from natural reservoirs, wells, pipe lines, or other containers.

Accurate log to be kept of each well.

4. Gas producers and operators in this State shall keep an accurate and complete log of each and every well they drill, or deepen, showing all formations drilled through, casing used with the depth at which it is set, and all information concerning such well, metal line measurements to be made after each and every string of casing is set. This log and information shall be kept at the well during the time it is being drilled, and such producers or operators shall furnish the commissioner of conservation with two typewritten copies of such log and information of each well not later than 10 days after the completion or abandonment of any well: *Provided*, That the commissioner may by written order delay the time for written reports on certain wells designated by him.

Dry wells to be plugged.

5. All dry wells, or wells intended to be abandoned, must be plugged by confining all oil, gas, or water in the strata in which they are found.

Regulation of deepening, plugging, abandoning, etc.

6. No well shall be deepened, plugged, repaired, abandoned permanently or temporarily, neither shall the set casing in any well be side-tracked, perforated, or otherwise disrupted, without a written permit from the commissioner of conservation, except in case of emergency. The commissioner of conservation shall direct the manner in which all such work must be done. Before doing any of the things enumerated in this paragraph, except in cases of emergency, written notice of the time and place of such work must be given the commissioner of conservation in ample time for him to have a representative there.

High-pressure gas—Equipment to meet, required.

7. After the surface casing of any well is set in any field where it is not known that high pressure does not exist, proper anchorage shall be made to the surface casing so that the control casing head may be used in the two outer strings of casing at all times, and this type of casing head shall be kept in readiness for use in case high-pressure gas is encountered.

Preparation required.

8. In all proven or well-defined gas fields, or where it can be reasonably expected that gas in commercial quantities will be encountered, adequate preparation shall be made for the conservation of the gas before "drilling in" any well.

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Slush pit or sump hole.

9. Before commencing to drill a well a separate slush pit or sump hole shall be constructed by the owner, operator, or contractor, for the reception of all pumpings from clay or soft shale formations in order to have the same on hand for the making of mud-laden fluid.

Using same casing for different strata forbidden—Exception.

10. No well shall produce gas through the same casing from different strata at the same time without a written permit from the commissioner of conservation. If a stratum should be encountered bearing gas and the owner, operator, or contractor should desire to go deeper in search of either gas or oil, the stratum first penetrated, and likewise each and every oil or gas sand in turn, shall be closed separately; and if it is not wanted for immediate use, it shall be securely shut in so as to prevent waste, either open or underground.

Sealing off stratum.

11. No well shall be drilled through or below any oil, gas or water stratum without sealing of such stratum or the contents thereof regardless of volume or thickness of the sand.

Application of mud-laden fluid as safeguard.

12. No gas sand or stratum upon being penetrated shall be drilled or left open, except at the direction of the commissioner of conservation, without the application of mud-laden fluid or other means to prevent the escape of gas while further drilling in or through such sand or stratum.

Fresh water to be safeguarded from pollution.

13. Fresh water, whether above or below the surface, shall be protected from pollution, whether in drilling or plugging.

Oil and gas to be separated underground.

14. No gas found in the upper part of a level of sand which can be separated underground from the oil in the lower part of the same sand, or in a lower or different sand, shall be allowed or used to flow oil to the surface, and all gas, so far as it is possible to do so, shall be separated underground from the oil and securely protected.

When separation of oil and gas underground impossible.

15. When oil and gas are found in the same stratum, and it is impossible to separate underground the one from the other, the operator shall install at the surface a separating device of approved type which will be kept in place and used as long as necessity therefor exists, unless ordered otherwise by the commissioner of conservation.

Conservation agents, etc., to have access to all wells.

16. Conservation agents, representatives, or employees shall have access to all wells at any and all times, and all companies, contractors, or drillers shall permit representatives of the department of conservation to go upon any lease or property operated or controlled by them, and shall permit them to inspect any and all wells, and well records, while being drilled and at other times, except that the records of wildcat wells shall not be subject to this rule until the well is completed.

Casing required under varying conditions.

17. In drilling gas wells in this State it shall be unlawful for any operator or operators to use less than three strings of casing in known high-pressure gas areas. Each casing shall be of such unit weight as to have a factor of safety of at least two with reference to collapse from external hydrostatic pressure as determined by the commonly used table of figures for collapse of casings. All casing shall be set in suitable formation and securely cemented in accordance with the best practice. A satisfactory test showing that the water is shut off by each string of casing shall be made before continuing with drilling. The last casing shall be cemented with at least 100 sacks of cement, and as near as practicable to the oil or gas formation, using no solid foreign material with the cement.

Testing of casing.

18. No person, firm, association, or corporation shall use a joint of pipe or casing as portion of the last water string above high-pressure gas or any deeper strings of casing in a well or wells without first testing such casing by plugging or capping both ends and filling same with cold water and applying the following pressures for different sizes of casing:

8-inch or 8¼-inch	1,200 pounds per square inch.
6⅝-inch	1,400 pounds per square inch.
6¼-inch or smaller	1,500 pounds per square inch.

It shall be unlawful to use any joint of pipe or casing in any well that does not fully stand such a test without injury thereto, and each

joint of pipe or casing, so used, shall be tested separately within 30 days prior to its use.

The commissioner of conservation may relieve, by written permit, any driller or operator from the necessity of complying with the provisions of this rule, or rule No. 17 above, if in his judgment he thinks that the rule should be abated in any certain case, or cases, or in any certain area.

When gas well may be shot—Permit.

19. No gas well shall be shot without a written permit from the commissioner of conservation, and only then under such rules and in such manner as the commissioner of conservation shall direct.

Rock or working pressure test.

20. The surface equipment of every gas well shall include fittings that will allow representatives of the department of conservation to take rock-pressure or working-pressure test of a gas well at any time, including the time when the initial open-flow capacity test is made.

Pressure between casings—Remedy.

21. When an operator discovers that pressure has developed between casings he shall immediately notify the department of conservation. When any well develops a gas pressure between casings, due to a leak of gas through or around the inner casing such condition of underground waste shall be corrected, if possible, by cementing another string of pipe or otherwise repairing the well in a manner satisfactory to the department of conservation. Only as a last resort and with the consent of the said department shall the repair of such conditions be attempted with cement or other material by introducing it between casings at the surface and forcing or gravitating it downward.

Cementing of water strings of casing.

22. All final water strings of casing shall be cemented by efficient methods of cementing, with at least the following amounts of cement, except when the commissioner of conservation by written order directs otherwise:

For depths less than 300 feet	25 sacks.
For depths 300 to 500 feet	35 sacks.
For depths 500 to 1,000 feet	50 sacks.
For depths 1,000 to 2,000 feet	60 sacks.
For depths 2,000 to 3,000 feet	75 sacks.
For depths over 3,000 feet	100 sacks.

Removal of water by blowing—When permitted.

23. No water shall be removed from gas wells by blowing it through the casing, except for such wells as the department of conservation may find it necessary to make exception. The water shall be removed from the wells, if practicable, through lines of smaller diameter, installed in the casing, and commonly known as siphons.

Gas must be metered.

24. No gas shall be taken from any gas well without being metered. The meter shall be at or near the well, and no by-pass shall be on the gas line at such place that the gas can be passed around the meter.

The meter to be used—Requirements.

25. No meter or measuring apparatus shall be of a size or capacity other than that reported by the producer to the conservation department. There shall not be any willful or intentional leakage of gas in or near the meter, or measuring apparatus, or any other condition knowingly existing in the meter, or measuring apparatus, or in the gas line that causes the meter or measuring apparatus to register any other amount of gas than the true amount that is being drawn from the well.

Same—Authorities to have access to meters.

26. Each well shall be equipped with a meter, properly housed and locked, and the department of conservation shall have access to all well meters, at all times, and shall be furnished with a duplicate key to meter houses, shall make such reasonable tests as it may see fit, and shall be furnished at the end of each week with all original meter records, and the department of conservation shall, within 15 days, return such records to the operator or producer, or photostatic copies thereof. However, no adjustments of the meters or wells shall be made by the department of conservation without due notice to the operator.

Gas not to be used for flambeau lights—"Jumbo" burners permitted.

27. It shall be unlawful for any operator, contractor, driller, company, association, or corporation to use natural gas for illuminating purposes in what is known as flambeau lights, but nothing herein shall prohibit the use of " jumbo " burners or other burners in glass globe consuming no more gas than such " jumbo " burners.

Monthly reports required—Forms prescribed.

28. Every gas producer shall make monthly reports on forms prescribed and furnished by the commissioner of conservation of all gas

wells completed during that month, and of all gas produced during that month, showing the amount of gas taken from each well and the location of such well, and of all gas consumed, sold, or purchased that month.

Tests of open-flow capacity and closed pressure—How often made.

29. The commissioner of conservation shall make, or cause to be made, a test of the open-flow capacity of each producing well once every 12 months, and of the closed pressure of each producing well, whether the gas is being used from the well or not, at least once every four months. He shall make, or have made, an inspection of the working pressure or back pressure of each well once every month. The commissioner of conservation shall make any or all of these tests oftener on certain wells if he thinks necessary, or he may omit taking them on certain wells when the condition of the well is such that it is not safe to do so. The rated open-flow capacity of each well shall be reduced or increased at the time of each closed-pressure test in the proportion that the closed pressure has declined or increased from the closed pressure existing at the date of the last previous open-flow test.

Conditions under which gas may be used for pumps, engines, etc.

30. Gas shall not be used as motive power for pumps, engines, or other machinery instead of steam, except in cases when the gas is subsequently utilized, except upon the approval of the commissioner of conservation.

When discharge or escape of oil, etc., not prohibited.

31. Nothing in this act is intended or shall be construed so as in any manner to prohibit the discharge or escape of oil or fluid incident to the prudent drilling, cleaning, or operation of wells for oil or gas.

Percentage of the open-flow capacity that gas wells may be allowed to produce—Size of tracts and volume of flow permitted.

SEC. 3. The percentage of the open-flow capacity that gas wells may be allowed to produce or that may be drawn from each gas well shall depend upon the acreage upon which the well is drilled.

When a tract of 160 acres of land or more has one producing well on it there may be taken from such well no more than 24 per cent of its open-flow capacity.

When a tract of 80 acres of land has one producing well on it there may be taken from such well no more than 21 per cent of its open-flow capacity.

When a tract of 40 acres has one producing well on it there may be taken from such well no more than 18 per cent of its open-flow capacity.

When a tract of 20 acres of land has one producing well on it there may be taken from such well no more than 15 per cent of its open-flow capacity.

When a tract of 10 acres of land has one producing well on it there may be taken from such well no more than 12 per cent of its open-flow capacity.

When a tract of 5 acres of land has one producing well on it there may be taken from such well no more than 9 per cent of its open-flow capacity.

When a tract of less than 5 acres of land has one producing well on it there may be taken from such well no more than 7 per cent of its open-flow capacity.

When the acreage on which any well is drilled is between any two of the above classes the percentage of its open-flow capacity that such well may produce shall be in direct proportion between the percentage that a well on the larger acreage will be allowed to produce and the percentage that a well on the smaller acreage will be allowed to produce.

Where the percentages hereinabove provided applied to any well reduces the amount allowed below 1,000,000 cubic feet there may be taken from such well a total of 1,000,000 cubic feet, provided the back pressure as elsewhere herein provided for shall be maintained.

When two or more wells are drilled on one tract, as above described, for the purpose of determining the allowable percentage that such well may produce the tract shall be divided by the owner or lessee into two or more tracts of smaller class and the allowable percentage determined by the rules governing the smaller tracts.

All wells shall be drilled as near the center of the acreage units above provided for as is practicable, but in no case to exceed 100 feet from the center, and the commissioner of conservation shall not issue a drilling permit that will violate the provisions hereof: *Provided*, That the percentage of open-flow capacity of each well as fixed in this section, depending on location, shall not apply to any well or wells heretofore drilled or to a well or wells the drilling of which

was commenced on or before June 24, 1924: *And provided also*, That all wells heretofore drilled or the drilling of which was commenced on or before June 24, 1924, or for the drilling of which bona fide contracts by the terms of which the lessee is obligated and compelled to drill a well or wells on the property embraced and described in such contracts and for a breach of which contract or contracts so to drill an action for specific performance or damages will lie against the lessee, and which said contracts were on file prior to June 24, 1924, in the office of the clerk of court in the parish in which the property to be drilled is situated, shall be allowed to produce the same percentage of the open-flow capacity that such wells could produce under Act 91 of 1922: *And provided further*, That offset wells, located diagonally or opposite and equidistant from the property line, may be drilled to all wells heretofore drilled or the drilling of which was commenced on or before June 24, 1924, or to wells for the drilling of which bona fide contracts were on file prior to June 24, 1924, in the office of the clerk of court in the parish in which the property to be drilled is situated, and such offset well or wells shall be allowed to produce the same percentage of open-flow capacity as the well or wells so offset.

NOTE.—*Held*, That the 1,000,000 cubic feet minimum provided in this section applied for the benefit of wells drilled prior to June 24, 1924, as well as afterwards. *State* v. *Carson Carbon Co.*, 162 La. 781, 111 So. 162 (1926).

In the same case (*State* v. *Carson Carbon Co.*) it was objected that Act 91 of 1922 imposes a limitation only on the use of gas for manufacturing carbon black, and that the bill of information did not charge that the gas was being so used. It was held that the 1924 act forbade production in excess of the figures fixed in the 1922 act "for the manufacture of carbon black or for any other purpose."

In *State* v. *Thrift Oil & Gas Co.*, 162 La. 165, 110 So. 188 (1926), the defendant produced in seven days from a well drilled prior to June 24, 1924, more than 20 per cent of the open-flow capacity, the limit fixed by Act 91 of 1922, but less than 1,000,000 cubic feet per day.

Held, That the conviction for violation of the 1924 act must be reversed (110 So. 198):

"Hence the sum and substance of this case is that there is but one statute regulating the amount of natural gas which may be taken from a well, and that statute is the act of 1924, with a proviso therein incorporated to the effect that a well drilled before the passage of said act may still take at least the same percentage of gas as it might have taken under the act of 1922."

Language to the same effect appears in the concurring opinion of St. Paul, J., in *State* v. *Carson Carbon Co.*, 162 La. 781, 111 So. 162 (1927), on application for rehearing.

To the same effect as the case of *State* v. *Thrift Oil & Gas Co.*, 110 So. 188, see *State* v. *Consumers Gas Co.*, 162 La. 200, 110 So. 200 (1926), in which the defendant produced from a well drilled prior to June 24, 1924, gas in excess of 20 per cent of the open-flow capacity but less than 1,000,000 cubic feet per day. Conviction for violation of the 1924 act was reversed.

Allowable percentage each gas well may produce—Determined by commissioner of conservation.

SEC. 4. The commissioner of conservation shall determine in accordance with the above rules the allowable percentage that each gas well may produce, and such determination shall protect the gas producer from any of the penalties by this act provided; and the failure of the commissioner of conservation to determine in advance the allowable quantity that each well may produce shall authorize the gas producer to determine such percentage without incurring the penalties provided by this act, and where a well is drilled on land not sectionized by governmental survey, or where under any other conditions no rule is laid down for determining the open-flow capacity that any well or wells may be allowed to produce, such wells shall be allowed to produce approximately the same percentage that they would if the land had been regularly sectionized, and the commissioner of conservation shall fix the allowable percentage that such wells may be allowed to produce in conformity to this rule.

Quantity of gas which may be lawfully taken during a fixed period.

It shall be unlawful for any person, firm, corporation, or association of persons to take more gas from any well for a period of seven consecutive days than the maximum production allowed to be taken from such well would amount to for the same period, or to take more gas from any well in any one day than one and one-half times the allowable production of such well, or to take any gas whatever from any gas well when the working pressure of such well is less than one-half the closed pressure of such well: *Provided*, That the working pressure of any well can not be reduced below 200 pounds regardless of what the closed pressure is: *Provided further*, That in all fields where the rock pressure is less than 200 pounds and the gas is being produced, sold, and transported for domestic and industrial fuel purposes exclusively the back pressure herein provided for shall not apply where artificial means are employed to produce and market the gas from such fields, and when the rock pressure of such fields is less than 150 pounds the withdrawal percentage provided for herein shall not apply.

NOTE.—A conviction under a bill of information charging violation of this section was sustained in *State* v. *Carson Carbon Co.*, 162 La. 781, 111 So. 162 (1927). The well involved was drilled before June 24, 1924, and hence under section 3 its production was controlled by Act 91 of 1922. It was held, however, that violation of the production quota set by the 1922 act was in violation of the 1924 act also, since the limitations of the 1922 act are incorporated by reference to section 3 of the 1924 act.

Commissioner of conservation may increase or decrease percentage of open-flow capacity or working pressure.

When in his judgment he thinks it necessary to conserve the gas in any well or in any area, or to protect any person from financial loss, the commissioner of conservation may increase or decrease the percentage of the open-flow capacity that may be taken from any gas well or wells, or he may increase or decrease the working pressure required to be maintained in such gas wells.

Carbon black—Permits to manufacture from gas—Conditions.

SEC. 5. The commissioner of conservation may grant permits for the building of plants to burn natural gas into carbon black under the conditions and provisions of Act 91 of 1922, except that the percentage of the open-flow capacity of gas wells that may be utilized in burning carbon black shall be controlled by this act when the production of such wells is controlled by this act and by Act 91 of 1922 when the percentage that such wells may produce is controlled by said Act 91 of 1922. Such permits shall only be granted to bona fide applicants and which permits shall automatically expire one year after date of issue.

Gas for carbon black must be burned economically and efficiently.

Where gas is burned into carbon black in this State it must be burned economically and efficiently.

No gas for carbon black to be piped out of State.

No gas whatever shall be piped out of the State and burned into carbon black in another State.

Carbon-black manufacturers to submit reports.

1. Each and every carbon-black manufacturer and gas producer shall make a report in duplicate to the commissioner of conservation on or before the 20th day of each month showing the total amount of gas sold or consumed, the amount of gas burned into carbon black, and the amount and kind of carbon black produced during the preceding month.

Inspectors to have access to carbon-black plants.

2. The agents of the department of conservation shall at all times have access to any carbon-black plant for the purpose of obtaining any and all information necessary to the carrying out of the provisions of this act, and it shall be the duty of those in charge of such carbon-black plants to furnish such conservation agents with such information.

When new carbon-black plants permitted.

3. No permit shall be granted, and the commissioner of conservation is without authority to grant a permit, for the construction of a new carbon-black plant except upon written application on forms prepared by the department of conservation, in which application the applicant shall state that he, they, or it will fully and completely abide by and comply with all of the provisions of this act, and with all the rules and regulations of the commissioner of conservation established under the provisions of this act.

Must furnish monthly report showing amount of gasoline extracted.

4. A monthly report, not later than the 20th of each month, shall be furnished the department of conservation showing the total amount of gasoline extracted from gas during the preceding month. This report shall be made by each operator extracting gasoline from gas.

Monthly reports by commissioner of conservation showing gas produced, carbon made, and gasoline extracted.

5. The commissioner of conservation shall compile monthly reports from the reports furnished by the producers showing the total amount of gas produced, carbon made, and gasoline extracted, which totals shall be open to the public, but the individual reports shall not be open to public inspection. All gas-meter reports shall be public records.

NOTE.—*Herkness* v. *Irion*, 11 Fed. (2d) 386 (E. D. La. 1926), refused an injunction against interference by the commissioner of conservation with the plaintiff's manufacture of carbon black, the plaintiff having applied for a permit and the commissioner having replied that no permits would be issued to anyone. The court held that no Federal question was involved.

Commissioner of conservation to make rules for conservation of gas—Scope of rules.

SEC. 6. It shall be the duty of the commissioner of conservation to make and enforce rules and regulations for the conservation of gas of this State not in conflict herewith. He shall have authority to prevent the waste of gas in drilling and producing operations and

the piping and distribution thereof and to make rules and regulations for that purpose. It shall be his duty to require dry or abandoned wells to be plugged in such a way as to confine oil, gas, and water to the stratum in which they are found, and to prevent them from escaping into other strata, and to establish rules and regulations for that purpose. He is empowered to establish rules and regulations for the location and spacing of wells and the amount of gas that may be drawn from any well or wells not in conflict with this act or any other law of this State.

It shall be his duty to establish rules and regulations for the drilling of wells and keeping records thereof and to require such wells to be drilled in such manner as to prevent injury to the adjoining property, and to prevent gas and water from escaping from the stratum in which they are found into other strata; to establish rules and regulations for shooting wells and for keeping the gas separate from any water or oil-bearing stratum. He shall have authority to require records to be kept, and reports made by gas-well drillers, operators, pipe-line companies, carbon companies, or any other users of gas, and to establish such rules and regulations as may be necessary to carry into effect the provisions of this act, and as may be necessary to conserve the gas resources of this State, whether herein specifically granted or not, the only limitation being that such rules and regulations shall not be in conflict with the provisions of this act.

He shall enforce the provisions of this act and of Act 270 of 1918 and of Act 91 of 1922.

In *State* v. *Carson Carbon Co.*, 162 La. 781, 111 So. 162 (1927), the defendant, whose well was drilled prior to June 24, 1924, produced gas in excess of the 20 per cent limitation fixed by Act 91 of 1922 and in excess of the 1,000,000 cubic feet provision of section 3 of Act 252 of 1924 and in excess of the maximum of 24 per cent fixed by the same section. He was indicted under the 1924 act and a conviction thereunder was sustained, the court apparently regarding section 3 as establishing a maximum of 20 per cent on wells drilled prior to June 24, 1924, by reference to the 1922 act.

Experts—Authority to employ.

SEC. 7. The commissioner of conservation shall hire such expert help as may be necessary to adequately enforce the provisions of this act, and such expenses shall be paid out of the appropriation made for the department of conservation.

Penalty.

SEC. 8. That any person, partnership, firm, corporation, or association of persons willfully violating any of the provisions of this act, or any rule, regulation, or order of the commissioner of conservation

prescribed and promulgated by authority of this act, which rules, regulations, and orders are hereby declared to have the force and effect of statutory law, shall be guilty of a misdemeanor, and on conviction thereof shall be punished for the first offense by a fine of not less than $100, and not more than $1,000, and for the second offense not less than $100, nor more than $5,000, and for the third offense not less than $100, nor more than $10,000, in the discretion of the court, and each and every day on which any person, partnership, or association of persons shall violate any of the provisions of this act, or any such rule, regulation or order of the commissioner of conservation, except as provided in section No. 4 hereof, shall constitute a separate offense hereunder and subject the offender to the penalty herein provided; and three convictions within a period of two years for violating any of the provisions of this act, or any such rule, regulation, or order of the commissioner of conservation, where the violations are willful and where the second violation succeeds a prior conviction, and the third violation succeeds the second conviction, shall subject the offender in the discretion of the court to the forfeiture of the right to do the business in the State that such offender is engaged in or carrying on, and wherein such convictions were had, at the suit of the commissioner of conservation before a court having jurisdiction at the place where such offenses were committed.

Attorney general and district attorney to aid in enforcement of act.

SEC. 9. It shall be the duty of the attorney general, or the district attorney of any judicial district where the businesses described herein are being conducted, to represent the commissioner of conservation in the enforcement of all the provisions of this act, and of the orders, rules, and regulations made, adopted, and promulgated by said commissioner of conservation by authority of this act. All criminal prosecutions under this act shall be by the district attorney of the judicial district having jurisdiction of such offenses the same as any other criminal prosecution.

Act cumulative where not in direct conflict with other laws—Unconstitutionality of part not to extend to remainder.

SEC. 10. This act shall be cumulative of and in addition to all the laws of this State which are not in direct conflict with the provisions hereof. If any of the provisions of this act shall be held unconstitu-

tional, or for any other reason shall be held void, such holdings shall not have the effect of nullifying the remaining parts of this act, but parts not so held to be void shall nevertheless remain in full force and effect.

NOTE.—*Held*, That this section effected the incorporation into Act 252 of 1924 of Act 91 of 1922 as "a mere section of the act of 1924," and the act of 1924 was intended to be, and is, the paramount statute regulating the production of natural gas in this State." *State* v. *Thrift Oil & Gas Co.*, 162 La. 165, 110 So. 188 (1926).

Authority given to commissioner of conservation cumulative.

SEC. 11. The authority given the commissioner of conservation by this act shall in no sense be understood to supersede or nullify any of the provisions of this act, or any other act of this State, but shall be cumulative and in aid thereof.

Violation of act by corporation—Procedure.

SEC. 12. Any corporation violating the provisions of this act, or any order of the commissioner of conservation promulgated by authority of this act, may be prosecuted by indictment, or information, the same as a natural person, and in addition to and cumulative of any way now existing for bringing a corporation into court in criminal prosecutions, may be brought into court to answer such prosecutions by service of a certified copy of such indictments or information served in the same manner as a civil suit would be served with notice to appear and answer such charge within 10 days. In the event of failure to appear and answer such charge within the said 10 days judgment by default may be entered as in civil cases, which judgment by default shall constitute a joining of issues and be treated as a plea of not guilty, and on the third day thereafter, if no appearance has been made in the meantime, evidence may be introduced on the part of the State and the trial judge may render such judgment and sentence as the law and evidence warrant. The amount that such defendants are sentenced to pay may be collected as sentences in other criminal cases, and in addition thereto may be collected in the same manner and same way as judgment in civil cases.

NOTE.—In *State* v. *Carson Carbon Co.*, 162 La. 781, 111 So. 162 (1927), it was held that corporations could be brought into court under this section only for violation of Act 252 of 1924, and hence that the section was not violative of a constitutional prohibition against incorporation of more than one subject in one act.

Words and phrases.

SEC. 13. The following definitions and constructions are made a part of and shall be used in construing the meaning and purposes of this act: "Day" means a day of 24 hours; "person" means a natural person, a partnership, an association of persons, or a corporation; "well" means either a gas well, oil well, or water well, as the context shows; "gas" means natural gas as it is taken from the earth, including any gasoline content it may have, but it does not include casing-head gas; gas in "commercial quantities" means gas in any well defined gas sand regardless of the amount of gas found; where gas is referred to in this act by measurement, it means that the gas shall be measured at a pressure of 10 ounces above an atmospheric pressure of 14.4 pounds to the square inch; "open-flow capacity" means the open-flow capacity as carried on the records of the department of conservation unless the context shows otherwise: The "open-flow capacity" is computed and shall be computed on the basis of what it would be if the gas was being produced and measured through a 6-inch casing: *Provided*, That a well originally drilled in with less than 6-inch producing casing must be measured on the basis of a size of the producing casing, and can not be corrected to the basis of a 6-inch producing casing; "closed pressure" means the maximum pressure that results from closing in the well; a "wildcat well" is a well drilled in unproven territory.

Approvals of permits to be in writing.

Whenever under the provisions of this act the approval by or permit from the department of conservation is stipulated, such approval or such permit shall be in writing.

ACT 253 OF 1924 (OIL)

AN ACT to further conserve the oil natural resources of the State of Louisiana.

Omitted, as this act was reenacted, with additional provisions, as act 123 of 1926, approved July 8, 1926, which see in full, infra.

ACT 123 OF 1926 (OIL)

TO AMEND and reenact section 1 of Act 253 of 1924, entitled "An act to further conserve the oil natural resources of the State of Louisiana," and to add a section 2 thereto authorizing the commissioner of conservation to make additional rules and regulations for the conservation of oil resources similar to and supplemental of the provisions of this act; and to add a section 3 thereto providing penalties for violation of said act. (Approved July 8, 1926; Acts, 1926, p. 190.)

SECTION 1. Be it enacted by the Legislature of Louisiana, that section 1 of Act 253 of 1924 be amended and reenacted so as to read as follows:

Summary action permitted department of conservation.

SECTION 1. * * * That (1) the department of conservation shall have the right, when quick action is required, to secure arrests or injunctions against violators of the conservation laws relating to minerals without the sanction of the attorney general of the State.

Spacing of oil wells.

(2) The department of conservation shall have the power to devise and enforce rules for the spacing of oil wells in any area of the State to suit the needs of each particular locality.

Waste of oil forbidden.

(3) All operators, contractors, drillers, or pipe-line companies drilling for or producing crude oil, or piping oil for any purpose shall use every possible precaution in accordance with the most approved methods, to stop and prevent waste of oil in drilling and producing operations, storage, or piping or distributing, and shall not wastefully utilize oil or gas, or allow same to leak or escape from natural reservoirs, wells, tanks, containers, or pipes.

Oil operators to keep log—Copy to be supplied department of conservation.

(4) Oil operators in Louisiana shall keep an accurate and complete log of each and every well they drill or deepen, and furnish the department of conservation with two typewritten copies of same, not later than ten days after the completion of any and all such work.

Production of oil and gas from same well not permitted—Exception.

(5) No well shall be permitted to produce both oil and gas from different strata unless it be in such manner as to prevent waste of any character to either product. Therefore, if a stratum should be encountered bearing gas, and the owner, operator or contractor should go deeper in search for either gas or oil-bearing sands, the stratum first penetrated and likewise each and every sand in turn shall be closed separately, and if it is not wanted for immediate use, it shall be securely shut in so as to prevent waste, either open or underground.

Strata to be sealed.

(6) No well shall be drilled through or below any oil, gas, or water stratum without sealing off such stratum or the contents thereof, after passing through the sand, either by the mud-laden fluid or cement process or by casing and packers, regardless of volume or thickness of sand.

Fires—Immediate notice to be given department of conservation.

(7) All drillers, operators, pipe-line companies, and individuals operating oil and gas wells or pipe lines shall immediately notify the department of conservation by telegraph or telephone and by letter of all fires which occur at oil wells or oil tanks owned, operated, or controlled by them or on their property, and shall immediately report all tanks struck by lightning and any other fires which destroy crude oil or natural gas, and shall immediately report in the manner heretofore described any breaks or leaks in the tanks or pipe lines from which oil or gas is escaping. In all reports of fires, breaks or leaks in pipes, or other accidents of this nature, the location of the well, tank, or line break shall be given, showing location by quarter, section, township, and range.

Drilling record to be kept—To be supplied authorities upon request.

(8) All operators, contractors, or drillers shall keep at each well, accurate records of the drilling, redrilling, deepening of all wells showing all formations drilled through, casing used, and other information in connection with drilling and operation of the property and any and all of its information shall be furnished to the department of conservation upon request, or to any conservation agent of the department.

Inspection by conservation agents.

(9) Conservation agents of the department shall have access to all wells at any and all times and all companies, contractors, or drillers shall permit any conservation agent of the department of conservation to come upon any lease of property operated or controlled by them and to inspect any and all wells, etc., provided that information so obtained by conservation agents shall be considered official information and shall be reported only to the department of conservation.

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Contractors and drillers made liable.

(10) All contractors and drillers carrying on business or doing work in the oil fields of the State, as well as leaseholders, landowners, and operators generally, shall take notice of any, and are hereby directed to observe and apply all regulations; and all contractors, drillers, landowners; and operators, will be held responsible for any infraction of said regulations.

Inflammable material and waste—Treatment.

(11) No inflammable product from any oil or gas well shall be permitted to run into any tank, pool, or stream used for watering livestock, and all waste of oil and refuse from tanks or wells must be drained into proper receptacles, at a safe distance from the tanks, wells, or buildings, and be immediately burned or transported from the premises, and in no case shall it be permitted to flow over the land. Salt water shall not be allowed to flow over the surface of the land.

Conservation agents to assist enforcement.

(12) All conservation agents of the department shall assist in the enforcement of these rules and shall immediately notify the department of conservation upon observance of any infraction thereof.

Rules and regulations to be prescribed.

(13) The department of conservation will from time to time prescribe rules, regulations, and requirements for the conservation of crude oil, or petroleum.

Casing swab prohibited—Exception.

(14) The use of the casing swab or other like devices used for lifting oil to the surface by means of wire cables and suction tools is hereby prohibited, except:

1. Where swabbing is necessary in the bringing in or stimulating the well for short periods and not for general production; provided that special permission may be obtained from the commissioner of conservation for a longer, or continued, use under safe conditions and in areas where it would cause no damage.

Wells and rigs to be permanently marked.

(15) Any firm, person, association, or corporation, who shall drill a well or wells in the State of Louisiana for oil shall hereafter permanently mark all rigs or wells in a conspicuous place, showing name of owner and the designation of the well and shall take all necessary means of precaution to preserve these markings.

Written notice to drill, etc., to be given department of conservation.

(16) Written notice to drill, deepen, plug, sidetrack casing that has been set, pull, temporarily abandon, abandon, perforate or otherwise disrupt a string of casing in a well or wells shall be given to the department of conservation made out on such blanks or forms as provided or designated by the department of conservation for that purpose.

Before performing work on wells, for which permit is required, notice must be given to the department of conservation in order that a representative may be present.

Monthly reports to be furnished—Special reports.

(17) The department of conservation requires monthly reports on forms or blanks furnished by or designated by the department of conservation, to be filled out completely, showing the completed oil wells, also the production of oil by parishes and the pipe line, tank car, and other runs of sales by parishes. If the department of conservation finds it advisable to make detailed investigation of any particular area the operators shall furnish for a reasonable time monthly reports of production by individual wells for that area. These reports for individual oil wells shall be reasonably accurate estimates for the amounts of oil, water, and emulsion produced during the calendar month.

Measurements to be checked by steel measuring line.

(18) All oil wells drilled in the future shall have the daily or estimated log measurements checked by a steel measuring line at least once during the drilling; and if only one such measurement is made it shall be at a point no shallower than the shoe of the deepest water string of casing, or no shallower than 80 per cent of the total depth. In case a difference of measurements is found, the log shall be suitably corrected before filing with the department of conservation. The steel-line measurements shall be recorded on the logs.

Cementing—Standards required.

(19) In areas of the State where oil is produced all final water strings of casing shall be cemented by approved methods of cementing, with at least the following amounts of cement, except in cases where impracticable to do so:

For depths less than 300 feet	25 sacks.
For depths 300 to 500 feet	35 sacks.

For depths 500 to 1,000 feet	50 sacks.
For depths 1,000 to 2,000 feet	60 sacks.
For depths 1,000 to 2,000 feet	75 sacks.
For depths over 3,000 feet	100 sacks.

Permits for temporary abandonment of wells.

(20) When a well is in such condition that it is doing, or may do, damage to the underground deposits of oil and gas and the owner is in doubt as to whether he desires to repair or abandon the well, the department of conservation will, if the circumstances warrant, issue a permit for temporary abandonment, which work shall be prescribed and witnessed by said department.

Drilling rig, etc.—When removal necessary.

In the case of new wells that are not considered commercially producible by the owner, and which are not meant to be produced as soon as possible, the drilling rig and drill pipe shall not be removed from premises until after the department of conservation has been notified and the disposition of the well decided.

Wild wells.

(21) Wells producing both oil and gas shall not waste or blow into the air an amount of gas of more value at 3 cents per thousand cubic feet than the market value of the oil recovered. The commissioner of conservation shall allow a reasonable time to determine the status of any well.

Commissioner of conservation to make necessary rules for conservation of oil.

SEC. 2. That the following shall be added to said act and shall be styled section 2:

"SEC. 2. The commissioner of conservation shall be authorized, and is hereby directed, to make and promulgate all necessary reasonable rules and regulations for the conservation of oil in addition to the provisions of this act: *Provided*, That such regulations shall not be in conflict herewith, but supplemental hereto."

Penalty for violation.

SEC. 3. That the following shall be added to said act and shall be styled section 3:

"SEC. 3. That any person, partnership, firm, corporation, or association of persons willfully violating any of the provisions of this act, or any rule, regulation, or order of the commissioner of conservation prescribed by authority of this act, which rules, regulations, and orders are hereby declared to have the force and effect of statutory law, shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than $50 and not more than $1,000, in the discretion of the court, and each and every day on which any person, partnership, corporation, or association of persons shall violate any of the provisions of this act, or any such rule, regulation, or order of the commissioner of conservation, shall constitute a separate offense hereunder and subject the offender to the penalty herein provided."

(Approved by the governor July 8, 1926.)

ACT 45 OF 1930

TO CARRY into effect sections 1 and 2 of Article VI of the constitution of Louisiana; to authorize and require the commissioner of conservation of the State of Louisiana to create, as a division of his department, a bureau of scientific research and statistics; to authorize and require, through such bureau, the study and compilation of scientific data concerning the * * * minerals of the State. * * *.

Commissioner of conservation authorized to create bureau of scientific research and statistics.

SECTION 1. Be it enacted by the Legislature of Louisiana, that the commissioner of conservation of the State of Louisiana be, and he is hereby, authorized and required to create, as a division of the department of conservation, a bureau of scientific research and statistics. * * * This bureau of scientific research and statistics, so created, shall be charged with the duty of the scientific study of the natural resources of the State of Louisiana, particularly * * * the forest and minerals, and any and all natural resources of the State of Louisiana coming under the jurisdiction of the commission of conservation; and to compile statistical data resulting from such studies.

Employment of labor, geologists, etc.

SEC. 2. The commissioner of conservation shall employ such unskilled labor and assistance as may be necessary to carry on efficiently such bureau of scientific research and statistics, and * * * such geologist or geologists as may be necessary to study the problems affecting the mineral resources of the State, * * * and it shall be the duty of these scientists so employed to make such studies and to compile the results of their studies and to promptly report the same to the director of the division of the department of conservation to which the subject matter appertains, so that recommendations predicated upon such research studies may be made by such directors to the commissioner of conservation.

* * * * * * *

Study of natural resources; authority of commissioner of conservation to cooperate with other agencies.

SEC. 4. The commissioner of conservation of the State of Louisiana is hereby further authorized, in the studies of the natural resources of this State, to collaborate and cooperate, through the bureau of research herein established, with the Department of Agriculture of the United States of America * * * and any other of the Federal agencies charged with the scientific study of the natural resources of the United States of America in so far as the same may appertain to the natural resources of the State of Louisiana * * *

Notices of hearings to be published; how held.

SEC. 5. The commissioner of conservation shall inaugurate the bureau of scientific research and statistics as soon as practicable. * * * When reports are received from the bureau of scientific research and statistics as affecting any particular natural resource of the State, and such report indicates the necessity of regulation of the time, place, conditions, manner, means, or methods, or reducing to possession and/or of commercially utilizing such natural resource, a study thereof shall be made by the commissioner of conservation, and notice of the finding of such bureau shall be made public by publication one time in the official journal of the State and in a daily newspaper published in New Orleans; and a hearing shall be had at the department of conservation to consider such report; and notice of the subject matter and the time and place of such hearing shall be given by publication in the official journal of the State and in a daily newspaper published in New Orleans three times within 10 days.

At such meeting so held the commissioner of conservation, or in his absence the acting commissioner of conservation, shall preside, and opportunity to be heard shall be given those interested in the particular industry or subject matter of the hearing; and at such hearing the director of the particular division of the department of conservation and the scientist reporting shall be required to be present.

After such hearing the commissioner of conservation shall be, and he is hereby, authorized to carry into effect, if approved by him, the recommendations of the bureau of scientific research and statistics, as made by the scientist in charge of the particular study.

* * * * * * *

Reports of scientific study to be filed with commissioner of conservation.

SEC. 9. The commissioner of conservation is authorized and directed to cause such scientific study as may be necessary to be carried on, through such assistance as may be necessary, by the director of the division of mines and minerals, and by the director of the division of forestry, and reports of such studies shall be made to such respective directors, to be by them transmitted to the commissioner of conservation with their recommendations, to be acted upon by the commissioner of conservation in accordance with the provisions of section 5 of this act.

Records to be kept.

SEC. 10. The statistics assembled by the scientific investigations herein provided for shall be also furnished to and filed with the director in charge of the statistical division of the department of conservation, who shall record same in such form as to be available for ready reference and open to public inspection, and for further annual study of the subject matter investigated where such study must extend over a series of seasons or years, to secure accurate data as to the increase or decrease of any natural resource supervised by the commissioner of conservation. The director of the bureau of statistics shall be required by the commissioner to include in an annual report to the commissioner of conservation these tables of comparative results secured from year to year in the various natural resources supervised by the commissioner of conservation, so as to show any increase or decrease in comparative production.

* * * * * * *

Constitutionality.

SEC. 12. In order to carry into effect the provisions of sections 1 and 2 of Article VI of the constitution of Louisiana, the provisions of this act shall be broadly construed. In the event that any portion or section of this act shall be held for any reason to be invalid or unconstitutional, the remaining portions of this act shall continue in full force and effect. (Approved July 11, 1930.)

REGULATIONS

JANUARY 1, 1928

Not reprinted here; conform generally to the rules stated in section 1 of Act 123 of 1926 (oil), and section 2 of Act 252 of 1924 (gas).

STATE OF MICHIGAN

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STATE OF MICHIGAN

ACT 9 OF 1929

PUBLIC ACTS OF MICHIGAN, 1929, pp. 21–26

APPROVED MARCH 19, 1929

AN ACT to regulate corporations, associations or persons engaged in the business of carrying and transporting natural gas through pipe lines and to regulate the production, purchase and sale of natural gas; to provide for the control and regulation of such corporations, associations and persons by the Michigan public utilities commission; to define the powers and duties of the commission relative thereto; to prescribe penalties for the violations of the provisions hereof; and to repeal act number twenty-nine of the public acts of eighteen hundred eighty-nine.

Who may conduct business—Regulation.

SECTION 1. Every corporation, association or person, now or hereafter exercising or claiming the right to carry or transport natural gas by or through pipe line or lines, for hire, compensation, or otherwise, or now or hereafter exercising or claiming the right to engage in the business of piping or transporting natural gas, or any other person or persons, now or hereafter engaging in the business of buying and selling or transporting natural gas within the limits of this State, shall not have or possess the right to conduct or engage in said business or operations, in whole or in part, as above described, or have or possess the right to locate, maintain, or operate the necessary pipe lines, fixtures and equipment thereto belonging, or use in connection therewith, concerning the said business of carrying or transporting natural gas as aforesaid, on, over, along, across, through, in or under any present or future highway, or part thereof, or elsewhere, within the State, or have or possess the right of eminent domain, or any other right or rights, concerning said business or operation, in whole or in part, except as authorized by and subject to the provisions of this act, except, further, and only such right or rights as may already exist which are valid, vested, and incapable of revocation by any law of this State or of the United States.

May condemn, etc.—Proviso.

SEC. 2. For the purpose of acquiring necessary right-of-ways, every such corporation, association or person is hereby granted the right of condemnation by eminent domain, and the use of the highways

in this State, for the purpose of transporting natural gas by pipe lines, and for locating, laying, constructing, maintaining, and operating the same; and such condemnation proceedings shall be conducted in accordance with the procedure and in the same manner as is provided by the laws of this State for the condemnation of right-of-ways by railroad companies: *Provided, however*, That no corporation, association or person shall be granted such right of condemnation by eminent domain or the right to use the highways of this State to lay or construct, maintain or operate a pipe line or lines for the transmission or transportation of natural gas unless and except such pipe line or lines are to be used solely and exclusively for the transmission, transportation, and distribution of natural gas within the State of Michigan.

Regulating agency—Provisos.

SEC. 3. There is hereby granted to and vested in the Michigan public utilities commission, hereinafter styled the "Commission," the power to control and regulate corporations, associations and persons engaged, directly or indirectly, in the business of purchasing or selling or transporting natural gas for public use; and said commission shall investigate any alleged neglect or violation of the laws of the State by any corporation, association or person purchasing or selling natural gas and transmitting or conveying the same by pipe line or lines for public use: *Provided*, That nothing in this act shall be construed to prevent oil and gas operators or producers of gas from laying pipe lines to transport or transmit gas to drilling wells within this State: And *provided further*, That factories or industries in this State may transport or transmit gas through pipe lines for their own use in plants located wholly within this State without constituting themselves a common purchaser within the terms of this act.

Common purchaser defined—Discrimination prohibited.

SEC. 4. Every corporation, association or person, now or hereafter claiming or exercising the right to carry or transport natural gas by pipe line or lines, for hire, compensation, or otherwise, within the limits of this State, as owner, lessee, licensee, or by virtue of any other right or claim, or now engaged or hereafter engaging in the business of purchasing and selling natural gas shall be a common purchaser thereof, and shall purchase all the natural gas in the vicinity of, or which may be reasonably reached by its pipe lines, or gathering branches, without discrimination in favor of one producer or one person as against another, and shall fully perform all the duties of a common purchaser; but if it shall be unable to perform

the same, or be legally excused from purchasing and transporting all the natural gas produced or offered, then it shall purchase and transport natural gas from each person or producer ratably, in proportion to the average production, and such common purchasers are hereby expressly prohibited from discriminating in price or amount for like grades of natural gas or facilities as between producers or persons; and in the event it is likewise a producer, it is hereby prohibited from discrimination in favor of its own production, or production in which it may be interested directly or indirectly, in whole or in part, and its own production shall be treated as that of any other person or producer.

Commission to make regulations.

SEC. 5. The commission is hereby empowered and it is made its duty to make regulations for the equitable purchasing, taking, and collecting of all such gas for the metering and delivery of the same and for providing adequate facilities for service demanded, which regulations shall apply to all persons affected thereby in like manner; and it shall have authority to relieve any such common purchaser, after due application, notice, and hearing, from the obligation of purchasing gas of an inferior quality or grade or from purchasing gas from wells which for economic reasons are not at the time a practicable source of supply.

Deemed common carrier.

SEC. 6. All corporations, associations, and persons, purchasing or collecting natural gas and transmitting or conveying the same for hire, compensation, or otherwise by pipe lines or lines as a common carrier shall be a common carrier thereof as at common law, and it shall be unlawful for any such common carrier doing business within this State to give, either directly or indirectly, any preference or advantage to any person, copartnership, corporation, or locality, in any respect whatsoever as to rates, service, facilities for service, or commodity delivered.

Maximum daily flow.

SEC. 7. All corporations, associations, and persons, whether producing or receiving gas from producers in any production field, are hereby prohibited from taking more than twenty-five per centum of the daily natural flow of any gas well or wells, unless, for good cause shown, under the exigencies of the particular case, the commission shall establish a higher or lower per centum under the prescribed rules and regulations thereof.

When production curtailed.

SEC. 8. Whenever the full production from any common source or field of supply of natural gas in this State is in excess of the market demands, then any common purchaser of such natural gas as herein defined receiving production or output from such source or field, shall take therefrom only such proportion of the available supply as may be marketed and utilized without waste, as the natural flow of the well or wells owned or controlled by such common purchaser bears to the total natural flow or production of such common source or field, having due regard to the acreage drained by each well, so as to prevent any common purchaser from securing an unfair proportion therefrom; and it shall be the duty of the commission and it is hereby empowered to regulate and enforce the above provision, provided that the commission may by proper order permit the taking of a greater proportion by any common purchaser whenever or wherever it shall determine a taking of such greater proportion reasonable and equitable or conducive to public convenience or necessity.

Approval of transmission lines—Map required—Proviso.

SEC. 9. Any corporation, association, or person within the terms of this act desiring to construct transmission mains for the transportation or conveying of natural gas from its source to the locality or localities where utilized shall submit to the commission, accompanied by due application, a map or plat of such proposed line or lines which it desires to construct, showing the dimensions and character of such proposed pipe line or lines, its compression stations, control valves, and connections, and shall first receive the approval of the commission of such map, route, and type of construction before proceeding with the actual construction of such transmission lines; and it shall be the duty of the commission to examine and inquire into the necessity and practicability of such transmission line or lines and to determine that such line or lines will when constructed and in operation serve the convenience and necessities of the public before approval of such map and proposed transmission line or lines: *Provided*, That persons, associations, or corporations having already acquired the rights of common purchasers and common carriers at the time the provisions of this act became effective shall be required to file the map or plat provided for in this section only.

Schedule of rates—Alteration.

SEC. 10. Every common purchaser or common carrier of natural gas shall before receiving the same for transmission or delivery

file with the commission a schedule of the rates and price at which it will receive gas at delivery stations from any wells, field, or source of supply as well as the rates or charges at which it will deliver gas to connecting carriers or distributing lines or customers, and, in case it is operating as a carrier for hire, the rates and charges which it will charge for the service to be performed by it, together with copies of all contracts for purchasing, receiving, or supplying gas, which price to be paid, rates, and charges, shall be stated and set up in the manner and form required by the commission and outlined in its rules and regulations for filing of rates of artificial gas utilities or in accordance with such rules, regulations and conditions of service as may be hereafter adopted by the commission and which it is hereby empowered to make for the regulation of such common purchasers and common carriers of natural gas. Thereafter a going common purchaser or common carrier of natural gas may alter or amend its price paid, rates, charges, and conditions of service by application to and approval by the commission in the same manner and by the same process and under the same legal limitations and like right and process of appeal as are now provided by statute for the regulation by the commission of the rates for electricity transmitted in this State.

Copy of contracts.

SEC. 11. Every common purchaser or common carrier of natural gas shall file with the commission a true and verified copy of the contract for the sale and purchase of gas entered into between the producer or producers and such common purchaser or common carrier, within thirty days after the making thereof.

Annual statement required.

SEC. 12. Every common purchaser and common carrier of natural gas is hereby required to file with the commission on or before April first of each year, upon blanks to be prescribed and furnished by the commission, an annual statement of its income, expenses, operating and corporate accounts for the preceding calendar year, including the state of its finances in capital securities, fixed capital, and other related corporate or balance sheet accounts and including also statistical data relating to the production, purchase, transmission, and sales of gas by such common purchasers and common carriers of natural gas, its equipment facilities and customers, said statement to be verified by the oath of some officer of the utility knowing the facts stated therein.

System of accounts, etc.

SEC. 13. The commission shall have the power and authority and it is hereby made its duty to prescribe the manner and the form or system of accounts, financial records, and operating memoranda or data to be set up and kept by all common purchasers and common carriers of natural gas and every common purchaser and common carrier of natural gas existing and operating within this State is hereby required to set up and keep its books of accounts, records, and memoranda in the manner and form prescribed by the commission.

Prevention of waste.

SEC. 14. The commission shall have authority to prevent the waste of natural gas in producing operations and in the piping and distribution thereof and to make rules and regulations for that purpose. It is hereby authorized and empowered to do all things necessary for the conservation of natural gas in connection with the production, piping, and distribution thereof and to establish such other rules and regulations as will be necessary to carry into effect this act, to conserve the natural gas resources of the State and to preserve the public peace, safety, and convenience in relation thereto.

Penalty for violation of order, etc.

SEC. 15. Any corporation, association or person, violating any provision of this act or any order or regulation of the commission made pursuant thereto, shall be deemed guilty of an unlawful act and shall be liable to a penalty of not less than one hundred dollars, nor more than twenty thousand dollars. Any officer, agent, representative, employee or servant of any corporation or association or any person who causes, aids or assists, or participates in any such unlawful act shall be deemed guilty of a misdemeanor, and on conviction thereof shall be liable to a fine of not less than one hundred dollars, nor more than one thousand dollars, or to imprisonment in the county jail not less than thirty days, nor more than one year, or to both such fine and imprisonment in the discretion of the court. Said penalty shall be exclusive of civil liability.

Employment Authorized.

SEC. 16. The commission is hereby authorized and empowered to employ such clerks, inspectors, and experts as may be necessary to carry out and administer the provisions of this act.

Municipal corporations excepted.

SEC. 17. Nothing in this act contained shall be construed to vest the commission with regulatory control and authority over any natural gas utility owned and operated by a municipal corporation nor to in any way infringe upon the authority of the duly constituted official bodies having charge of such municipally owned utilities.

Saving clause.

SEC. 18. Should any section, subdivision, clause or sentence of this act be declared unconstitutional, or void for any reason, such holding shall not in any manner affect or invalidate any other provision or section of this act, and all provisions of any section of this act which are constitutional and valid shall remain in full force and effect.

Act repealed.

SEC. 19. Act number twenty-nine of the public acts of eighteen hundred eighty-nine is hereby repealed.

Emergency declared.

SEC. 20. An emergency is hereby declared, by reason whereof it is necessary for the immediate preservation of the public peace, safety, convenience and welfare that this act take immediate effect.

This act is ordered to take immediate effect.

Approved March 19, 1929.

ACT 15 OF 1929 (ACT 185 OF 1931)

PUBLIC ACTS, 1929, PP. 31–38; APPROVED MARCH 27, 1929

AS AMENDED BY ACT 185, MAY 28, 1931

AN ACT to provide for a supervisor of wells; to prescribe his powers and duties: to provide regulations for the locating, sinking, drilling, casing, deepening, operating, abandonment, and plugging of oil and gas wells and test holes; to provide for and regulate the payment of fees, issuance of permits, and payment of money received under the provisions of this act; to provide for an appeal board; to prescribe penalties for the violations of this act, and to repeal Act No. 65 of the Public Acts of 1927.

Supervisor of wells.

SECTION 1. The director of conservation shall act as supervisor of wells. He shall designate such suitable assistants in the department of conservation as shall be required to carry out the provisions of this act.

Duties of supervisor of wells—"Waste" defined.

SEC. 2. It shall be the duty of the supervisor of wells, directly or through his representatives or assistants, to inspect the locating, drilling, casing, deepening, sealing, and operating of oil and gas wells or test holes, so far as the same may endanger, result in waste, or do damage to, the oil and gas, the fresh, brine, and mineral waters, or to other mineral resources, or to life and property; to supervise the abandonment and plugging of oil and gas wells or test holes and to see that such work shall be done in accordance with the methods and means prescribed in this act or by such methods and means as he or his authorized representatives may prescribe or approve in writing, and to issue and enforce such additional rules and regulations as he may find necessary to prevent damage and waste to the oil and gas, the fresh, brine, and mineral waters, the other mineral resources, and to prevent danger to life or property from oil and gas operations; to visit from time to time operations for the discovery or production of oil and gas, to inspect such operations with a view to preventing waste of oil and gas, damage to formations or deposits containing oil, gas, valuable brines, mineral or fresh waters, or to coal measures or other mineral deposits, injury to life or property, or economic waste; and to issue, in accordance with the provisions of this act such necessary instructions to owners, operators, well contractors and drillers as will effectively prevent such waste or damage, or danger; to collect all data and information concerning wells and test holes, necessary for the intelligent supervision of the locating, drilling, redrilling, deepening, casing, sealing, repairing, operating, abandoning, and plugging of the same that the oil and gas, the fresh, brine, and mineral waters, and other mineral resources, and life and property, may be most efficiently and effectively protected against unnecessary danger, injury, waste, or destruction; to prescribe the manner and form in which all records of operations, reports, and notices shall be made by owners, operators, contractors, or drillers; to require that tests shall be made to detect wastes of oil and gas, as well as the presence of oil, gas, or water in a well; to require the correction, in a manner to be prescribed or approved by him, of any condition found to exist during the drilling or subsequent to the completion of a well which is causing, or is likely to cause, damage to any formation bearing oil, gas, valuable brines, mineral or fresh waters, or to coal measures or other mineral deposits; or which is dangerous to life or property or wasteful of oil or gas; to determine the percentage of the potential capacity of any gas well which may be utilized when, in his opinion, such action is necessary to protect the gas-producing formations and to specify the time and method for determining the potential capacity of gas wells; to assist and advise

owners or operators of oil and gas wells in making tests and carrying on experiments for the purpose of increasing the efficiency of operation; to compile statistics of production and value of oil, gas, and natural gas-gasoline; to require by written notice, immediate suspension of any operation or practice contrary to the requirements of this act, the rules and regulations made thereunder, or to the written orders of the supervisor or his representatives, until the owner, operator, well contractor, or driller shall have complied with such requirements or orders. The term "waste," as used in this act, in addition to its ordinary meaning shall include (A) escape of natural gas in commercial quantities into the open air from a stratum recognized as a natural gas stratum, (B) the intentional drowning with water of a gas stratum capable of producing gas in commercial quantities, (C) underground waste, (D) the permitting of any natural gas well to wastefully burn, (E) the wasteful use of such gas. (As amended, 1931, Act 185.)

SEC. 3. No person (or his representatives or employees) shall begin the sinking or drilling of any oil or gas well or test hole until such person or his authorized representative shall first have filed with the supervisor of wells a written application and shall have received a written permit signed by the well supervisor or his authorized representatives to begin such well or test hole. Such application shall set forth the exact location of the well or test hole by giving the legal description of the property or properties on which the well or test hole is to be drilled; the section, township, and range thereof in unplatted land; the lot or fraction thereof, the block, the recorded plat, and the municipality in platted land; the distance of the proposed well or test hole from the nearest well and the nearest property lines, and the distance in two directions from the nearest section corner or quarter post; the name of the farm or property; the name and address of the lessee or lessees, if any, of the fee; the purpose for which it is to be sunk or drilled; the intended depth of the well; the oil and gas and water bearing formations which are expected to be penetrated; and such other information as may be required by the supervisor of wells. Such application shall be signed by the owner of the proposed well or test hole, or his authorized representative and forwarded to the supervisor of wells or his authorized representative for approval, and when approved shall be filed as a permanent record in the department of conservation. Upon payment of a permit fee of $25 by such applicant the supervisor of wells shall issue in duplicate within five days to any responsible person making proper application therefor, a permit to drill or sink such well or test hole in accordance with the terms of the application, which permit when obtained by the applicant shall be exhibited in a con-

spicuous place at all times at the location of the well: *Provided, however*, That no permit shall be issued to any applicant or operator who is in violation of, or who is not complying with, the provisions of this act and with the rules and regulations issued by the supervisor of wells, of the department of conservation, of the State fire marshal, and commissioner of the department of insurance. Every person who has received a written permit for drilling a well or test hole, shall, before actual drilling is begun, file a surety bond by some company authorized to do business in this State in an amount not less than $1,000, or such owner, operator, or driller may file a blanket surety bond of not less than $2,500 or in such amount as the supervisor of wells may deem necessary and adequate to insure that any and all wells drilled by such person shall be cased, sealed, and/or operated or plugged in accordance with the provisions of this act and/or with the rules and regulations issued by the supervisor of wells. Said bond shall cover a period of at least one year from date of issue. It shall be renewed if necessary in order to remain in force and effect until the well shall be properly plugged and abandoned. (As amended, 1931, Act 185.)

Service of notice.

SEC. 4. Service of any notice, order, rule, regulation, or requirement under this act may in the case of a corporation or association be made upon any officer thereof or upon any person in the employ of the corporation or association who may be found at any office or place of business maintained by said corporation or association. In the event of the failure to immediately obtain service as aforesaid upon any corporation or association, or upon any individual or partnership, service may be made upon any employee or upon any contractor employed by said individual, partnership, corporation, or association, or upon any employee of said contractor, who may be found at the well, and service made as above provided shall be deemed service upon the owner or operator of such well or test hole. Service may be made by the supervisor of wells, any of his representatives, members of the Michigan State police, any constable, sheriff, undersheriff, or deputy sheriff.

Permit fee.

SEC. 5. The supervisor of wells shall thereupon pay such permit fee to the State treasurer, together with a report giving the name of the applicant, the date and number of the permit issued, and the location of the proposed well. The State treasurer shall place all permit fees so paid to him in the general fund.

Casing, etc.

SEC. 6. Every person who shall drill, sink, or cause to be sunk such a well or test hole penetrating bedrock shall case and seal off each oil, gas, brine, or water stratum or formation to effectually prevent migration of gas or fluids to other strata, and such casing or sealing off shall be effected and tested in such manner and by such methods and means as may be prescribed or approved by the supervisor of wells or his authorized representative.

Log to be kept—Drilling records.

SEC. 7. Every owner, operator, or well contractor shall, while the well or test hole is being drilled, keep and preserve at the well being drilled or sunk an accurate log or record of such well, shall protect such record from damage or destruction by fire, oil, water, or any other agency, whereby such record may be lost or become illegible; and shall within 30 days after the completion of any well or test hole file with the supervisor of wells a copy of such log or record duly sworn to by such person or persons as have knowledge of the facts therein contained; and upon request of the supervisor of wells or his authorized representative shall take and preserve forthwith adequate samples of the core cuttings or churnings, or liquids removed from such well or test hole, in containers provided by the supervisor of wells, or his representative, and forward the same promptly to the geological survey division of the department of conservation. Such owner or operator shall keep at the well or at his headquarters in or adjacent to the field available for the inspection of the supervisor of wells or his representative, accurate records of the drilling, redrilling, deepening, plugging, or abandoning of all wells, and of all alterations to casing; the records to show all formations penetrated; the content of oil, gas, or water, and the character of each, in each formation; and the kinds, weights, landed depths, and sizes of casings used in drilling the wells. All records, logs, samples, and other information and material furnished to the supervisor of wells shall be considered confidential for a period of 90 days after completion of the well or test hole, and shall not be open to public inspection during such period. If the owner or operator of any such well or test hole shall desire to deepen such well or test hole, in addition to the depth allowed in the permit, he shall notify the supervisor of wells, or his authorized representative, in writing, identifying the well, giving the depth to which it is proposed to deepen the well or test hole, setting forth in detail the plan and/or method, and means to be used in sealing off any oil, gas, water, brine, or other mineral-bearing stratum or formations that have been or are expected to be penetrated in such deepening, also the plan and/or

method and means to be used in controlling the well upon completion in the event oil and/or gas is found. Upon receipt of such notice and proposal for deepening, the supervisor of wells, or his representative, shall promptly issue a deepening permit: *Provided, however*, That if, in the opinion of the supervisor of wells, or his authorized representative, the proposed plans and methods and means of effectively and permanently protecting the oil, gas, water, brine, and other mineral-bearing strata or formations or of effectively controlling the well in case oil and/or gas is struck, are not adequate and satisfactory, the supervisor of wells may refuse to issue such permit for deepening the well until adequate and satisfactory plans and methods and/or means are submitted by the applicant for a deepening permit. Actual deepening of any well or test hole shall not be started until the deepening permit is issued and is prominently displayed at the well. (As amended, 1931, Act 185.)

Approval before abandoning, etc.

SEC. 8. No person shall plug or abandon any well without first notifying the supervisor of wells or his representatives of his intention of and plans for doing the work and receiving written approval. The supervisor of wells or his representative shall supervise the work of abandoning such well or test hole, and the same shall be plugged by the owner or operator thereof forthwith. In order to effectually confine all oil, gas, or water to its own station, the owner or operators of such well or test hole shall before removing any casing securely fill the well or test hole with properly prepared mud-laden fluid weighing 11 pounds to the gallon to the bottom of the casing to be removed, and such filling shall be effected in such manner and by such means as the supervisor of wells or his representative shall prescribe or approve, and after removal of said casing shall place an iron ball of proper diameter on the offset so exposed. This procedure shall be repeated for each string of casing removed, and upon removal of the last string the hole shall be filled to the surface with such mud-laden fluid: *Provided, however*, That such hole may be filled to a fresh-water level and not to the surface with such mud-laden fluid in case the same is desired to be used as a fresh-water well: *And provided further*, That the supervisor of wells may prescribe or approve in writing, some other equally effective plugging procedure for wells or test holes where conditions make the use of mud-laden fluid and iron balls more difficult or impracticable.

Spacing.

SEC 9. No person shall drill any oil or gas well or test hole within 200 feet of the outer boundaries of any property, except where the

dimensions of the property prevent such spacing or the property is subject to drainage by an adjacent well. Such determination shall be made by the supervisor of wells.

Plugging after abandonment required.

SEC. 10. Every well or test hole penetrating oil, gas, or water bearing strata which has been abandoned and which has not been plugged in accordance with the provisions of this act shall be forthwith plugged by the owner or operator thereof in the presence of and under the supervision of the supervisor of wells or his duly authorized representative in accordance with the provisions of this act. In case such well or test hole shall not have been properly plugged within 30 days after this act shall have become effective, the supervisor of wells shall thereupon ascertain the name and address of the owner or operator thereof and shall proceed to give personal notice or notice by registered mail of such fact to such owner or operator thereof, after which time such owner or operator shall forthwith take all steps necessary to comply with the provisions of this act and shall thereafter be liable to the penalties herein provided. Hereafter such well or test hole shall be deemed to have been abandoned for the purposes of this act when the same shall have been left with intent on the part of the owner or operator thereof not to renew operations thereat, or, when and after the supervisor of wells shall find that such well or test hole is in fact not being operated or worked and shall give written notice thereof to such owner or operator, which notice shall have been served personally or by registered mail sent to the last known mail address of such owner or operator of such well or test hole: *Provided, however*, That in the event the owner or operator does not desire to either plug or operate the well immediately he shall, by adequate test, in the presence of the supervisor of wells or his authorized representative, give satisfactory proof that the well is in such condition and that by being allowed to continue to remain in its present condition no damage will be done to any oil, gas, fresh water, brine, or mineral bearing formation which has been penetrated: *Provided further*, That if the tests show the casing to be leaking, water standing in the hole, or any other condition which is causing or might cause damage to the oil, gas, fresh water, brine, or mineral bearing formations, the owner or operator of the well shall immediately do such work as will correct the conditions found. (As amended, 1931, Act 185.)

SEC. 11. When any owner or operator of any oil or gas well or test hole which has not been properly cased, plugged, or repaired, can not be found, the supervisor of wells, after having attempted to give notice, in writing, as provided in section 10 of this act, to the owner or operator of such well or test hole, may enter upon the

property and case, plug, or repair the well or test hole and the cost of such casing, plugging, or repairing shall thereupon be determined by the supervisor of wells. Upon demand and refusal to pay by the owner or operator of the well or test hole or in the case the owner or operator of the well or test hole can not be located, the supervisor of wells, in addition to any remedies provided by law, may forthwith, without bond, attach any property of such owner or operator of the well or test hole in any court of competent jurisdiction. Any person, firm, association, or corporation who abandons any well or test hole without plugging the same in accordance with the provisions of this act shall be guilty of a misdemeanor and shall be punished by a fine of $100 or by imprisonment in the county jail for a period of not more than 30 days, or both fine and imprisonment, in the discretion of the court. Nothing in this section shall be considered as imposing any liability upon any landowner upon whose land such well or test hole is located unless he also be owner or part owner of the well or test hole. (As amended, 1931, Act 185.)

SEC. 12. The provisions of this act shall not apply to drill holes put down for the exploration and the extraction of iron or copper in the iron or copper bearing districts, nor to fresh-water wells, to test, drill, and blast holes in mines and quarries, nor to coal test holes not exceeding 3 inches in diameter, nor to test holes not exceeding 4 inches in diameter after penetrating bedrock, or any other core or test hole for geological purposes, except that when any said wells or test holes penetrate salt and the mineral water bearing formation, the owner or operator shall plug such wells or test holes when completed or abandoned in such manner and by such methods as the supervisor of wells may prescribe or approve to effectually prevent migration of the brine or mineral water into the oil, gas, and fresh-water bearing formations, or to the surface. (As amended, 1931, Act 185.)

Conformity to act required.

SEC. 13. The owner or operator of a well or test hole or his authorized representative and every well contractor or driller shall conform to the provisions of this act and to all reasonable rules and regulations which the supervisor of wells may find necessary to issue from time to time to protect and conserve the oil and gas, the fresh, brine, and mineral water, and other mineral resources from unnecessary waste, danger, damage, or destruction, or to protect life or property, and while drilling, sinking, redrilling, repairing, completing, or operating a well or test hole shall take every reasonable precaution and method and means to prevent fires, explosions, or accidents.

Violation a misdemeanor—What deemed.

SEC. 14. Any person hereafter failing or neglecting to comply with or follow any of the provisions of this act or the rules and regulations issued under this act shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be liable to pay a fine of not more than $100, nor less than $50, or to imprisonment for not more than 90 days in the county jail, or to both such fine and imprisonment, in the discretion of the court. Where the offense is continuing such as the failure to properly plug an abandoned well or test hole, each day such failure to comply with or follow any of the provisions of this act continues, may be considered a separate offense and shall be punishable as such.

Appeals.

SEC. 15. An oil and gas appeal board is hereby created, consisting of the governor, the secretary of state, and the attorney general; and any person, firm, or corporation considering it or himself aggrieved by any order, rule, regulation, or requirement made by the supervisor of wells or his representative, may, within 24 hours after the attempted enforcement thereof, serve written notice by person, mail, or telephone upon the supervisor of wells that he or it appeals from the order, rule, regulation, or requirement to the oil and gas appeal board. The supervisor of wells shall forthwith set a day for hearing, not later than five days after the receipt of said notice of appeal, and shall immediately notify the said board and the appealing party of such date, together with the time and place of hearing. At the said hearing the appealing party and the supervisor of wells and their witnesses shall be heard, and any other person who may be affected by the decision of said board may be allowed to intervene. The decision of the board shall be final and not subject to appeal. During the pendency of said appeal the appealing party shall obey the order, rule, regulation, or requirement the validity of which is being questioned by the appeal.

Provisions of act severable.

SEC. 16. The provisions of this act are declared to be severable; and if any section or part of section be held invalid for any reason, it is hereby declared to be the legislative intent that the remaining provisions of this act would have been enacted without such section or part held to be invalid having been included therein.

Prior act repealed—Immediate effect given.

SEC. 17. Act No. 65 of the Public Acts of 1927 is hereby repealed: *Provided*, That any proceedings pending under said act shall not

be affected hereby, but shall be concluded in accordance with the law of such repealed act.

This act is ordered to take immediate effect.

(Approved March 27, 1929.)

ACT 16 OF 1929

PUBLIC ACTS OF MICHIGAN, 1929, P. 38

APPROVED MARCH 27, 1929

AN ACT to regulate the business of carrying or transporting, buying, selling, or dealing in crude oil or petroleum or its products, through pipe lines; to authorize the use of public highways and the condemnation of private property; to regulate the purchase and storage of crude oil or petroleum; to provide for the control and regulation of all corporations, associations, and persons engaged in such business by the Michigan Public Utilities Commission; to define the powers and duties of the commission in relation thereto; and to prescribe penalties for violations of the provisions hereof.

Who may conduct, etc., business.

SECTION 1. Every corporation, association, or person now or hereafter exercising or claiming the right to carry or transport crude oil or petroleum, or any of the products thereof, by or through pipe line or lines, for hire, compensation, or otherwise, or now or hereafter exercising or claiming the right to engage in the business of piping, transporting, or storing crude oil or petroleum, or any of the products thereof, or now or hereafter engaging in the business of buying, selling, or dealing in crude oil or petroleum, within the limits of this State, shall not have or possess the right to conduct or engage in said business or operations, in whole or in part, as above described, or have or possess the right to locate, maintain, or operate the necessary pipe lines, fixtures, and equipment thereunto belonging, or used in connection therewith, concerning the said business of carrying, transporting, or storing crude oil or petroleum as aforesaid, on, over, along, across, through, in, or under any present or future highway, or part thereof, or elsewhere, within this State, or have or possess the right of eminent domain, or any other right or rights, concerning said business or operations, in whole or in part, except as authorized by and subject to the provisions of this act, except, further, and only such right or rights as may already exist which are valid, vested, and incapable of revocation by any law of this State or of the United States.

Right of eminent domain.

SEC. 2. For the purpose of acquiring necessary right of ways, every such corporation, association, or person is hereby granted the right of condemnation by eminent domain, and the use of the highways in this State, for the purpose of transporting petroleum by pipe lines, and the location, laying, constructing, maintaining, and operations thereof; and such condemnation proceedings shall be conducted in accordance with the same procedure and in the same manner as is provided by the laws of this State for the condemnation of right of ways by railroad companies.

Control, etc., in whom vested—Exception.

SEC. 3. There is hereby granted to and vested in the Michigan Public Utilities Commission, hereinafter styled the "Commission," the power to control, investigate, and regulate every corporation, association, or person, now or hereafter exercising or claiming the right to carry or transport crude oil or petroleum, or any of the products thereof, by or through pipe line or lines, for hire, compensation, or otherwise, or now or hereafter exercising or claiming the right to engage in the business of piping, transporting, or storing crude oil or petroleum, or any of the products thereof or now or hereafter engaging in the business of buying, selling, or dealing in crude oil or petroleum within the limits of this State: *Provided, however*, That all corporations, associations, or persons who are producers, or refiners of crude oil, or petroleum, or operators of private trunk or gathering lines or other methods of conveying such products, where the nature and extent of their business is private, and where in the conduct thereof no public interest is involved, are hereby specifically excepted and excluded from the terms of this act.

Common purchaser—Discrimination unlawful.

SEC. 4. Every corporation, association, or person now or hereafter claiming or exercising the right to carry or transport crude oil or petroleum or any of the products thereof, by pipe line or pipe lines, for hire, compensation, or otherwise, within the limits of this State, as owner, lessee, licensee, or by virtue of any other right or claim, or now engaged or hereafter engaging in the business of purchasing or storing crude oil or petroleum, shall be a common purchaser thereof, and shall purchase all the petroleum in the vicinity of, or which may be reasonably reached by its pipe lines, or gathering branches, without discrimination in favor of one producer or one person as against another, and shall fully perform all the duties of a common purchaser; but if it shall be unable to perform the same, or be legally excused from purchasing, transporting, or storing all of the petroleum produced, then it shall purchase, transport, or store petroleum from each person and producer

ratably, in proportion to the average daily production, and such common purchasers are hereby expressly prohibited from discriminating in price or amount for like grades of oil or facilities as between producers or persons; and in the event it is likewise a producer, it is hereby prohibited from discriminating in favor of its own production, or storage, or production or storage in which it may be interested directly or indirectly in whole or in part, and its own production and storage shall be treated as that of any other person or producer.

Deemed common carrier.

SEC. 5. Every corporation, association, or person now or hereafter engaged in the business of carrying or transporting crude oil or petroleum, or any of the products thereof, for hire or compensation or otherwise, by pipe line or lines, within this State, shall be a common carrier thereof as at common law, and no such common carrier shall allow or be guilty of any unjust or unlawful discrimination, directly or indirectly, in favor of the carriage, transportation, storage, or delivery of any crude, stock or storage oil, or any products thereof, in its possession or control, or in which it may be interested, directly or indirectly.

Acceptance to be filed.

SEC. 6. Before any corporation, association, or person shall have, possess, enjoy, or exercise the right of eminent domain, right of way, right to locate, maintain, or operate pipe lines, fixtures, or equipment appurtenant thereto, or used in connection therewith, as authorized by the provisions of this act, or shall have, possess, enjoy, or exercise any right conferred by this act, every such corporation, association, or person shall file in the office of the Michigan Public Utilities Commission an explicit authorized acceptance of the provisions of this act; and in cases of pipe lines a plat showing in detail the points within this State between which and the route along which the trunk line or trunk lines are proposed to be constructed, the intended size and capacity thereof, and the location and capacity of all pumping stations, gate valves, check valves, and connections and appliances of all kinds used, or to be used, on said trunk line or lines; and upon demand of the commission the proper party or parties, as required by said commission, shall promptly file a plat showing in detail all the lines owned and operated by them, respectively, with full and explicit information as to their capacity, size, and location, and the valves and connections, of all kinds, respectively, required or used in the operation thereof.

Penalty for violation.

SEC. 7. Any corporation, association, or person violating any provision of this act, or any order or regulation of the commission made pursuant thereto, shall be deemed guilty of an unlawful act and shall be liable to a penalty of not less than $100, nor more than $20,000. Any officer, agent, representative, employee, or servant of any corporation or association, or any person who causes, aids, or assists, or participates in any such illegal act shall be deemed guilty of a misdemeanor, and on conviction thereof shall be liable to a fine of not less than $100 nor more than $1,000, or to imprisonment in the county jail not less than 30 days, nor more than one year, or to both such fine and imprisonment, in the discretion of the court. Said penalty shall be exclusive of civil liability.

Rules, etc., commission may make.

SEC. 8. The commission is hereby authorized and empowered to make all rules, regulations, and orders, necessary to give effect and enforce the provisions of this act.

Employment of clerks, etc.

SEC. 9. The commission is hereby authorized and empowered to employ such clerks, inspectors, and experts as may be necessary to carry out and administer the provisions of this act.

Separability.

SEC. 10. Should any section, subdivision, clause, or sentence of this act be declared unconstitutional, or void for any reason, such holding shall not in any manner affect or invalidate any other provision or section of this act, and all provisions of any section of this act which are constitutional and valid shall remain in full force and effect.

Emergency declared.

SEC. 11. An emergency is hereby declared, by reason whereof it is necessary for the immediate preservation of the public peace, safety, convenience, and welfare that this act take immediate effect.

This act is ordered to take immediate effect.

(Approved March 27, 1929.)

SUMMARY OF REGULATIONS

DEPARTMENT OF CONSERVATION, SEPTEMBER 18, 1931

Duties of supervisor of wells:

(1) To inspect locating, drilling, casing, deepening, sealing, and operating, so far as the same may result in waste, etc.

(2) To supervise abandonment and plugging.

(3) To visit and inspect operations to prevent waste of oil and gas or "economic waste."

(4) To collect data and information respecting locating, drilling, redrilling, etc., for prevention of waste.

(5) To prescribe the form of records and reports.

(6) To require tests to detect waste and presence of oil, gas, or water.

(7) To require the correction of conditions causing waste, etc.

(8) To determine the potential capacity and allowable percentage of production of gas wells to protect gas-producing formations.

(9) To advise owners and operators.

(10) To compile statistics.

(11) To issue and enforce additional rules and regulations.

(12) To require, by written notice, immediate suspension of unlawful operations or practices.

"The term 'waste' in addition to its ordinary meaning shall include—

(A) Escape of natural gas in commercial quantities into the open air from a stratum recognized as a natural-gas stratum.

(B) The intentional drowning with water of a gas stratum capable of producing gas in commercial quantities.

(C) Underground waste.

(D) The permitting of any natural-gas well to wastefully burn.

(E) The wasteful use of such gas."

Requirements for owners, operators, or their authorized representatives, well contractors, and drillers.

(13) To apply for and receive a written permit before commencing drilling. The application shall set forth:

(*a*) Location: (*1*) Legal subdivision and (*2*) nearest wells and property lines.

(*b*) Name of property.

(*c*) Address of lessees.

(*d*) Drilling method.

(*e*) Purpose of well.

(*f*) Intended depth.

(*g*) Expected formations.

(*h*) Size and weights of casings.

(*i*) Provisions for excluding water and protecting sands.

(*j*) Date of commencing drilling.

(*k*) Time required to drill well.

"*Provided, however*, That no permit shall be issued to any applicant who is in violation of, or who is not complying with the provisions of the oil and gas conservation laws or with the rules and regulations issued by the supervisor of wells, of the department of conservation, of the State fire marshal and commissioner of the department of insurance."

(14) To give bond conditioned on proper abandonment prior to commencing drilling though after permit has issued.

(15) To provide slush pits for emergency mud.

(16) To case off each productive well or water-bearing stratum before drilling deeper.

(17) To take all precautions against fires.

(18) To keep and file accurate log, and, on request, take and preserve core samples.

(19) To notify the supervisor of wells before deepening a well.

(20) To notify the supervisor before abandoning a well; abandonment methods specified.

(21) "No person shall drill any oil or gas well or test hole within 200 feet from the outer boundaries of any property, except where the dimensions of the property prevent such spacing or the property is subject to drainage by an adjacent well. Such determination shall be made by the supervisor of wells."

(22) Use of torches or flambeau lights prohibited.

(23) High-pressure fittings required before drilling into gas formations.

(24) Measuring of formation depths and casing points required.

(25) Witnessing of casing and water shut-off tests by supervisor required.

(26) Pollution of streams, lakes, and surface property prohibited.

(27) No person shall use natural gas in its natural state in engines, pumps, or for the blowing of wells, where its pressure is in the main or direct operating force, unless the exhaust or discharge gas is properly conserved.

(28) Use of vacuum pumps prohibited except for casing head gas or in depleted field.

(29) "The escape of natural gas in commercial quantities into the air shall be deemed waste and is prohibited; it being understood that in a well producing both oil and gas from the same producing formation 1,800 cubic feet of gas per barrel of oil produced be considered as the maximum gas-oil ratio and the use of any higher gas-oil ratio is prohibited unless it can be proved to the supervisor of wells or his authorized representative that for good operating practice and the best interests of any producing field or area some higher gas-oil ratio is necessary."

NOTE.—Regulation 27 of August 20, 1929, providing a maximum gas-oil ratio of 1,800 cubic feet per barrel of oil, has been deleted in the edition of September 18, 1931.

(30) Supervisor to have access to well and records; information obtained by supervisor to be confidential and not open to public inspection; records, logs, samples, etc., to be held confidential until 90 days after completion of well, unless specific permission to use them is given by the operator.

(31) Plugging of abandoned wells required.

(32) Plugging by the supervisor authorized where the owner can not be found.

(33) Act 15 of 1929 not to apply to wells drilled for exploration for iron or copper, to fresh-water wells, to test holes in quarries, to wells drilled for salt, brine, or mineral waters, coal-test holes, test holes not exceeding 4 inches in diameter or test holes drilled for geological purposes; except that abandonment methods for such holes are specified.

(34) Compliance with conservation laws and regulations required.

(35) "An oil and gas appeal board is created, consisting of the governor, secretary of State, and the attorney general (sec. 15, Act No. 15, Public Acts of 1929), and any person, firm, or corporation considering it or himself aggrieved by an order, rule, regulation, or

requirement made by the supervisor of wells or his representative may, within 24 hours after the attempted enforcement thereof, serve written notice by person, mail, or telephone upon the supervisor of wells that he or it appeals from the order, rule, regulation, or requirement to the oil and gas appeal board. The supervisor of wells shall forthwith set a day for hearing not later than five days after the receipt of the notice of appeal and shall notify the board and the appealing party of such date, together with the time and place of hearing. At the hearing the appealing party and the supervisor of wells and their witnesses shall be heard, and any other person who may be affected by the decision of the board may be allowed to intervene. The decision of the board shall be final and not subject to appeal.

"During the pendency of the appeal, the appealing party shall obey the order, rule, regulation, or requirement, the validity of which is being questioned by the appeal."

(36) Methods of service of notice prescribed. Breach of Act 15 of 1929 to constitute a misdemeanor.

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STATE OF MISSISSIPPI

LEGISLATION— PAGE

1932: Act of May 18 221

STATE OF MISSISSIPPI

ACT OF MAY 18, 1932

AN ACT to conserve crude oil or petroleum and gas; to create a State oil and gas board; to provide for the appointment of a State oil and gas supervisor; to fix his salary and the compensation of members of the board; to provide for the appointment and selection of agents and employees to administer and enforce the provisions of the act; to authorize such board to promulgate rules and regulations for the enforcement of the provisions of the act and to conserve oil and gas; to regulate the production thereof; to provide penalties for the violation of the provisions of the act or the regulations promulgated thereunder; to repeal all laws in conflict therewith, and for other purposes.

SECTION 1. *Be it enacted by the Legislature of the State of Mississippi*, That there is hereby created and established a board to be known as the State oil and gas board, to be composed of the governor, the attorney general, the State land commissioner, and a State oil and gas supervisor, who shall be appointed by the governor for a term of four years by and with the consent of the senate.

SECTION 2. *Qualifications of State supervisor and members of the board.*—The State oil and gas supervisor shall be a competent petroleum engineer or geologist with at least five years' experience in the development and production of oil and gas or a competent and experienced oil operator having had no less than five years' actual experience in the oil and gas fields. The supervisor shall not be actively engaged or interested in the production or transportation of crude oil or petroleum or natural gas, nor shall he be financially interested, directly or indirectly, in the purchase or ownership in any oil or gas well, drilling or producing, or in any oil or gas leases, or royalties while holding the office of State oil and gas supervisor of the State of Mississippi.

SECTION 3. *Compensation of supervisor and members of the board.*—The supervisor shall receive a salary not to exceed three thousand dollars ($3,000.00) per annum, shall be furnished a suitable office in the city of Jackson, and, in addition thereto, there shall be appropriated biennially a sum sufficient to cover reasonable expenses incurred in an economical administration of the office. The State oil and gas supervisor, before entering upon the duties of the office, shall take, subscribe, and file in the office of the secretary of state the oath of office prescribed by the constitution and shall file a certificate thereof, whereupon a commission shall be issued to him. The said oil and gas supervisor shall execute a bond in the penal sum of ten

thousand dollars ($10,000.00), approved and conditioned according to law, before entering upon the discharge of his duties.

SECTION 4. *Duties of State supervisor.*—The State oil and gas supervisor shall be charged with the duty of enforcing this act and all rules and regulations promulgated by said board and he shall devote his entire time to the performance of his official duties.

SECTION 5. *Powers of the board.*—(A) The board hereby created shall have authority to adopt and promulgate such rules and regulations as may be reasonable and proper and as it may deem necessary for the conservation of crude oil or petroleum and/or natural gas produced in the State of Mississippi and to provide such rules and regulations for the drilling, development, sinking, deepening, abandonment, and operation of oil and gas wells as may be necessary to prevent the waste of such products and to protect the common source of supply. Provided, that any person, firm, association, or corporation affected by or interested in any act, order, rule, or regulation of the board or of the supervisor may file a petition with the board for a hearing on such act, order, rule, or regulation and upon the filing of such petition for a hearing it shall be the duty of the board to thereupon set a day not less than 5 nor more than 15 days from the date of filing of such petition for a hearing. All hearings before the board shall be in open session and all interested persons and their witnesses shall be heard. All decisions of the board upon such petitions shall be made in writing and a copy served upon the petitioners; and any person, firm, association, or corporation being a party to such petition may appeal from the decision of the board within 10 days from the date of the rendition of the decision to the Circuit Court of Hinds County or of the county in which the petitioner is engaged in business or drilling operations. On the filing of a petition for appeal to the circuit court with the board it shall be the duty of the board to file a copy of the petition and order appealed from with the clerk of the circuit court to which the appeal is taken and the matter shall be tried de novo by the circuit court and the circuit court shall have full authority to approve or disapprove the action of the board. Appeals may be taken from the circuit court as allowed by law.

(B) The board shall keep a written record of all its actions and the record shall show the vote of each member on all matters. This record shall be open to public inspection and all rules and regulations promulgated by the board shall be printed and published.

(C) All necessary field and office assistants shall be employed by the board and may be removed at any time by the said board.

SECTION 6. *Quorum.*—Two members of the board shall constitute a quorum, but two affirmative votes shall be necessary for the adoption or promulgation of any rule or regulation of the board.

SECTION 7. *Waste prohibited.*—The production of gas, crude oil, or petroleum in the State of Mississippi, in such manner and under such conditions as to constitute waste, is hereby prohibited.

SECTION 8. *Waste defined; protection.*—That the term "waste" as used herein, in addition to its ordinary meaning, shall include underground waste, surface waste, and waste incident to the production of gas, crude oil, or petroleum. The State oil and gas board shall have authority to make rules and regulations for the prevention of such wastes, and for the protection of all fresh-water strata, and oil and gas-bearing strata encountered in any well drilled for oil or natural gas.

SECTION 9. *Production regulated—Discrimination of purchaser prohibited.*—That whenever the full production from any common source of supply of natural gas, crude oil, or petroleum in this State can only be obtained under conditions constituting waste as herein defined, then any person, firm, or corporation, having the right to drill into and produce oil or gas from any such common source of supply, may take therefrom only such proportion of all natural gas, crude oil, and petroleum that may be produced therefrom without waste, as the production of the well or wells of any such person, firm, or corporation bears to the total production of such common source of supply. The State oil and gas board is authorized to so regulate the taking of natural gas, crude oil, or petroleum from any or all common sources of supply within the State of Mississippi as to prevent the inequitable or unfair taking from a common source of supply of natural gas, crude oil, or petroleum by any firm, person, or corporation, and to prevent unreasonable discrimination therein.

SECTION 10. *Drilling of gas wells; permit required.*—Notice shall be given to the State oil and gas supervisor of the intention to drill, deepen, or plug any oil or gas well or wells, and of the exact location of each and every such well. Provided that nothing in this act shall be construed as requiring any permit to drill for gas and for oil or other minerals in any undeveloped field or territory.

SECTION 11. *Gas to be confined—Protection from infiltrating water.*—Whenever natural gas in commercial quantities, or a gas-bearing stratum known to contain natural gas in such quantities is encountered in any well drilled for oil or gas in this State, such gas shall be confined to its original stratum until such time as the same can be produced and utilized without waste, and all such strata shall be adequately protected from infiltrating water.

SECTION 12. *Prevention of waste generally; employing improved methods.*—All operators, contractors, drillers, pipe-line companies, gas-distributing companies, or individuals, drilling for or producing gas, or piping gas for any purpose, shall use every reasonable precaution in accordance with the most approved methods to stop

and prevent waste of gas in drilling and producing operations, or distributing the same, and shall not wastefully utilize gas or allow it to leak or escape from natural reservoirs, wells, pipe lines, or other containers.

SECTION 13. *Accurate log to be kept of each well.*—Oil and gas producers and operators in this State shall keep an accurate and complete log of each and every well they drill or deepen, showing all formations drilled through and into, casing used, with the depth at which it is set, and all information concerning such well, metal line measurements to be made to the casing seat of each string of casing. This log and information shall be kept at the well during the time it is being drilled, and such producers or operators shall furnish the State oil and gas supervisor with two typewritten copies of such log and information of each well not later than 15 days after the completion or abandonment of any well.

SECTION 14. *Dry wells to be plugged.*—All dry wells, or wells intended to be abandoned, must be plugged by confining all oil, gas, or water in the strata in which they are found.

SECTION 15. *Regulation of deepening, plugging, abandoning, etc.*—No well shall be deepened, plugged, repaired, abandoned permanently or temporarily, neither shall the casing set in any well be sidetracked, perforated, or otherwise disrupted without a written permit from the State oil and gas supervisor, except in case of emergency. The State gas and oil supervisor shall direct the manner in which all such work must be done. Before doing any of the things enumerated in this paragraph, except in cases of emergency, written notice of the time and place of such work must be given said supervisor in ample time for him to have a representative there.

SECTION 16. *High-pressure gas equipment to meet, required.*—After the surface casing of any well is set in any field where it is not known that high pressure does not exist proper anchorage shall be made to the surface casing, so that the control casing head may be used in the two outer strings of casing at all times, and this type of casing head shall be kept in readiness for use in case high-pressure gas is encountered.

SECTION 17. *Preparation required.*—In all proved or well-defined oil or gas fields, or where it can be reasonably expected that oil or gas in commercial quantities will be encountered, adequate preparation shall be made for the conservation of the oil or gas before "drilling in" any well.

SECTION 18. *Slush pit or sump hole.*—Before commencing to drill a well a separate slush pit or sump hole shall be constructed by the owner, operator, or contractor for the reception of all pumpings from clay or soft-shale formations in order to have the same on hand for the making of mud-laden fluid.

SECTION 19. *Using same casing for different strata forbidden—Exception.*—No well shall produce oil or gas through the same casing from different strata at the same time without a written permit from the State oil and gas supervisor. If a stratum should be encountered bearing gas and the owner, operator, or contractor should desire to go deeper in search of either gas or oil, the stratum first penetrated and likewise each and every oil or gas sand in turn shall be closed separately, and if it is not wanted for immediate use it shall be securely shut in so as to prevent waste, either open or underground.

SECTION 20. *Sealing off stratum.*—No well shall be drilled through or below any oil, gas, or water stratum without sealing off such stratum or the contents thereof regardless of volume or thickness of the sand.

SECTION 21. *Application of mud-laden fluid as safeguard.*—No gas sand or stratum, upon being penetrated, shall be drilled or left open, except at the direction of the supervisor, without the application of mud-laden fluid or other means to prevent the escape of oil or gas while further drilling in or through such sand or stratum.

SECTION 22. *Fresh water to be safeguarded from pollution.*—Fresh water, whether above or below the surface, shall be protected from pollution, whether in drilling or plugging. Provided, however, nothing in this act is intended or shall be construed so as to in any manner prohibit the reasonable discharge or escape of oil or fluid incident to the prudent drilling, cleaning, or operation of wells for oil or gas.

SECTION 23. *When separation of oil and gas underground impossible.*—When oil and gas are found in the same stratum and it is impossible to separate underground the one from the other, the operator shall install at the surface a separating device of approved type which will be kept in place and used as long as necessity therefor exists, unless ordered otherwise by the State oil and gas supervisor.

SECTION 24. *State supervisors and members of board to have access to all wells.*—The supervisor, members of the board, and their representatives or employees shall have access to all wells at any and all times, and all companies, contractors, or drillers shall permit the State oil and gas supervisor, the members of the board, or their representatives to go upon any lease or property operated or controlled by them, and shall permit them to inspect any and all wells and well records, while being drilled and at other times, and have such control over such property, machinery, and appliances as may be requisite to gage the wells, except that the records of wildcat wells shall not be subject to this rule until the well is completed.

SECTION 25. *Casing required under varying conditions.*—In drilling oil or gas wells in this State it shall be unlawful for any operator or operators to use less than three strings of casings in known high-pressure gas areas. Each casing shall be of such unit weight as to have a factor of safety of at least two with reference to collapse from external hydrostatic pressure as determined by the commonly used table of figures for collapse of casings. All casings shall be set in suitable formation and securely cemented in accordance with the best practice. A satisfactory test showing that the water is shut off by each string of casing shall be made before continuing with drilling. The final string of casing shall be cemented with at least 100 sacks of cement and as near as practicable to the oil and gas formation, using no solid foreign material with the cement.

SECTION 26. *Testing of casing.*—No person, firm, association, or corporation shall use a joint of pipe or casing as portion of the last water string above high-pressure gas or any deeper strings of casing in a well or wells without first testing such casing by plugging or capping both ends and filling same with cold water and applying the following pressures for different sizes of casing:

8 inch or 8¼	1,200 pounds per square inch.
6⅝ inch	1,400 pounds per square inch.
6¼ inch or smaller	1,500 pounds per square inch.

It shall be unlawful to use any joint of pipe or casing in any well that does not fully stand such a test without injury thereto, and each joint of pipe or casing, so used, shall be tested separately within thirty (30) days prior to its use. Provided, however, that the State oil and gas supervisor may relieve, by written permit, any driller or operator from the necessity of complying with the provisions of this section, if in his judgment he thinks that the rule should be abated in a particular case, or in any particular area.

SECTION 27. *When oil or gas well may be shot—Permit.*—No oil or gas well shall be shot without a written permit from the supervisor and only then under such rules and in such manner as the board shall direct.

SECTION 28. *Rock or working pressure test.*—The surface equipment of every gas well shall include fittings that will allow representatives of the board to take rock pressure or working pressure test of a gas well at any time, including the time when the initial open-flow capacity test is made.

SECTION 29. *Pressure between casings—Remedy.*—When an operator discovers that pressure has developed between casings, he shall immediately notify the State oil and gas supervisor. When any well develops a gas pressure between casings, due to a leak of gas through

or around the inner casing, such condition of underground waste shall be corrected, if possible, by cementing another string of pipe or otherwise repairing the well in a manner satisfactory to the said supervisor. Only as a last resort and with the consent of the said supervisor shall the repair of such conditions be attempted with cement or other material by introducing it between casings at the surface and forcing or gravitating it downward.

SECTION 30. *Cementing of water strings of casing.*—All final water strings of casing shall be cemented by efficient methods of cementing.

SECTION 31. *Removal of water by blowing—When permitted.*—No water shall be removed from gas wells by blowing it through the casing, except for such wells as the supervisor may find it necessary to make exception. The water shall be removed from the wells, if practicable, through lines of smaller diameter, installed in the casing, and commonly known as siphons.

SECTION 32. *Gas must be metered.*—No gas shall be taken from any gas well without being metered except the gas used in further operations on the lease. The meter shall be of approved type at or near the well, and no by-pass shall be on the gas line at such a place that the gas can be passed around the meter.

SECTION 33. *The meter to be used—Requirements.*—No meter or measuring apparatus shall be of a size or capacity other than that reported by the producer to the supervisor. There shall not be any willful or intentional leakage of gas in or near the meter, or measuring apparatus, or any condition knowingly existing in the meter, or measuring apparatus, or in the gas line that causes the meter or measuring apparatus to register any other amount of gas than the true amount that is being drawn from the well.

SECTION 34. *Same—Authorities to have access to meters.*—Each well shall be equipped with a meter, properly housed and locked, and the State oil and gas supervisor and members of the board shall have access to all well meters, at all times, shall be furnished with duplicate keys to meter and meter houses, and shall make such reasonable tests as it may see fit, and shall be furnished at the end of each week, with all original meter records, and the board shall, within 15 days, return such records to the operator or producer, or photostatic copies thereof, and the State oil and gas supervisor shall keep a permanent record in his office showing the daily production of each gas and oil well. However, no adjustments of the meters or wells shall be made by the supervisor or his agents without due notice to the operators.

SECTION 35. *Gas not to be used for flambeau lights—Jumbo burners permitted.*—It shall be unlawful for any operator, contrac-

tor, driller, company, association, or corporation to use natural gas for illuminating purposes in what is known as flambeau lights, but nothing herein shall prohibit the use of jumbo burners or other burners in glass globes consuming no more gas than such jumbo burners.

SECTION 36. *Monthly reports required—Form prescribed.*—Every oil or gas producer shall make monthly reports on forms prescribed and furnished by the board of all oil or gas wells completed during that month, and of all oil or gas produced during that month, showing the amount of oil or gas taken from each well and the location of such well, and of all oil or gas consumed, sold, or purchased that month.

SECTION 37. *Tests of open-flow capacity and closed pressure—How often made.*—(*a*) The supervisor shall make, or cause to be made, a test of the open-flow capacity of each producing well once every twelve months, and of the closed pressure of each producing well, whether the gas is being used from the well or not at least once every four months. He shall make, or have made, an inspection of the working pressure or back pressure of each well once every month. The supervisor shall make any or all of these tests oftener on certain wells if he thinks necessary, or he may omit taking them on certain wells when the condition of the well is such that it is not safe to do so. The rated open-flow capacity of each well shall be reduced or increased at the time of each closed pressure test in the proportion that the closed pressure has declined or increased from the closed pressure existing at the date of the last previous open-flow test.

(*b*) Gas shall not be used as motive power for pumps, engines, or other machinery instead of steam except in cases of emergency and where necessary to secure water for boilers to create steam in cold boilers, and also except when the gas is subsequently utilized, without the approval of the State oil and gas supervisor provided that nothing herein contained shall in any manner prevent the forcing of the same natural gas back into the same reservoir from which it originally came for repressure or conservation purposes.

SECTION 38. *Percentage of the open-flow capacity that gas wells may be allowed to produce—Sizes of tracts and volume of flow permitted—Location of wells.*—The percentage of the open-flow capacity that gas wells may be allowed to produce or that may be drawn from each gas well shall depend upon the acreage upon which the well is drilled.

When a tract of 160 acres of land or more has one producing well on it there may be taken from such well no more than 24 per cent of its open-flow capacity.

When a tract of 80 acres of land has one producing well on it there may be taken from such well no more than 21 per cent of its open-flow capacity.

When a tract of 40 acres has one producing well on it there may be taken from such well no more than 18 per cent of its open-flow capacity.

When a tract of 20 acres of land has one producing well on it there may be taken from such well no more than 9 per cent of its open-flow capacity.

When a tract of 10 acres of land has one producing well on it there may be taken from such well no more than 12 per cent of its open-flow capacity.

When a tract of 5 acres of land has one producing well on it there may be taken from such well no more than 9 per cent of its open-flow capacity.

When a tract of less than 5 acres of land has one producing well on it there may be taken from such well no more than 7 per cent of its open-flow capacity. Provided, that for the purpose of determining the percentage of open-flow capacity allowed to be withdrawn on acreage or area used as a basis for claiming the percentage herein allowed must be contiguous and adjoining the tract of land on which the well is located.

When the acreage on which any well is drilled is between any two of the above classes the percentage of its open-flow capacity that such well may produce shall be in direct proportion between the percentage that a well on a larger acreage will be allowed to produce and the percentage that a well on the smaller acreage will be allowed to produce.

Where the percentages hereinabove provided applied to any well reduces the amount allowed below 1,000,000 cubic feet there may be taken from such well a total of 1,000,000 cubic feet, provided the back pressure as elsewhere herein provided for shall be maintained.

When two or more wells are drilled on one tract, as above described, for the purpose of determining the allowable percentage that such well may produce the tract shall be divided by the owner or lessee into two or more tracts of smaller class and the allowable percentage determined by the rules governing the smaller tracts.

All wells shall be drilled as near the center of the acreage units above provided for as is practicable and the supervisor shall not issue a drilling permit that will violate the provisions hereof. Provided, that offset wells, located diagonally or opposite and, where possible, equidistant from the property line, may be drilled to all wells now or hereafter drilled, and such offset well or wells shall be

allowed to produce the same percentage of open-flow capacity as the well or wells so offset.

The withdrawal percentages provided for in this section shall not apply to a gas field or common source of supply within the State of Mississippi in which the combined open-flow capacity of all the wells does not exceed 10,000,000 cubic feet of gas per day.

SECTION 39. *Allowable percentage each gas well may produce—Determined by supervisor.*—The supervisor shall determine in accordance with the above provisions the allowable percentage that each gas well may produce, and such determination shall protect the gas producer from any of the penalties by this act provided; and the failure of the supervisor to determine in advance the allowable quantity that each well may produce shall authorize the gas producer to determine such percentage without incurring the penalties provided by this act.

It shall be unlawful for any person, firm, corporation, or association of persons to take more gas from any well for a period of seven consecutive days than the maximum production allowed to be taken from such well would amount to for the same period, or to take more gas from any well in any one day than one and one-half times the allowable production of such well, or to take any gas whatever from any gas well when the working pressure of such well is less than one-half the closed pressure of such well; provided, that the working pressure of any well can not be reduced below 200 pounds regardless of what the closed pressure is. Provided, further, that in all fields where the rock pressure is less than 200 pounds and the gas is being produced, sold, and transported for domestic and industrial fuel purposes exclusively the back pressure herein provided for shall not apply where artificial means are employed to produce and market the gas from such fields, and when the rock pressure of such fields is less than 150 pounds the withdrawal percentage provided for herein shall not apply.

When in his judgment he thinks it necessary to conserve the gas in any well or in any area, or to protect any person from financial loss, the oil and gas supervisor may increase or decrease the percentage of the open-flow capacity that may be taken from any gas well, or wells, or he may increase or decrease the working pressure required to be maintained in such gas wells.

SECTION 40. *Cooperative agreements.*—Agreements made in the interest of conservation of oil and gas, or the prevention of waste, between and among operators owning separate holdings in the same oil and gas pool, or in any area that appears from geological or other data to be underlaid by a common accumulation of oil and gas, or both, or between and among such operators and royalty

owners therein for the purpose of bringing about the development and operation of said pool, or area, or any part thereof, as a unit of establishing and carrying out a plan for the cooperative development and operation thereof, when such agreements are approved by the board, are hereby authorized and shall not be held or construed to violate any of the statutes of this State relating to monopolies or contracts and combinations in restraint of trade.

SECTION 41. *Attorney to represent board of supervisors.*—It shall be the duty of the attorney general or the district or county attorney of any judicial district or county where the businesses described herein are conducted to represent the State oil and gas supervisor or the State oil and gas board in the enforcement of the provisions of this act and of the orders, rules. and regulations made, adopted and promulgated by the said board by authority of this act. All criminal prosecutions under this act shall be by the district attorney or county attorney of the judicial district or county having jurisdiction of such offense the same as any other criminal prosecution.

SECTION 42. *Records—Inspected by the public.*—All well logs, casing records, meter readings, compiled data, and/or other information shall be properly indexed, suitably recorded in permanent records in the office of the supervisor, and be open to inspection by the public.

SECTION 43. *Penalty for violation of act or regulations.*—Any person, partnership, firm, corporation, or association of persons willfully violating any of the provisions of this act, or any rule or regulation promulgated by authority of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by fine of not less than fifty dollars and not more than one thousand dollars for each offense, and each day's violation shall constitute a separate offense.

SECTION 44. *Power of supervisor to enjoin—Injunction against board.*—The supervisor shall have power by injunction or other legal writ or process to enforce compliance with, or prevent violation of, the provisions of this act, or the regulation promulgated hereunder. Such actions may be conducted by the supervisor in his own name; provided, however, that he shall not be required to give bond for injunction or otherwise. Provided, further, that no injunction may be issued to restrain the supervisor or members of the board, or their agents in carrying out the provisions of this act or the regulations promulgated hereunder, except upon not less than three days' notice.

SECTION 45. *Definitions.*—The following definitions and constructions are a part of and shall be used in construing the meaning and

purposes of this Act and the regulations thereunder; "day" means a day of twenty-four hours; "person" means a natural person, a partnership, an association of persons, or a corporation; "well" means either a gas well, oil well, or water well, as the context shows; "gas" means natural gas as it is taken from the earth, including any gasoline content it may have, but it does not include casing-head gas; gas in "commercial quantities" means gas in any well-defined area or producing horizon regardless of the amount of gas found. Where gas is referred to in this Act by measurement, it means that the gas shall be measured at a pressure of ten ounces above the atmospheric pressure existing in the given area; "open-flow capacity" is computed and shall be computed on the basis of what it would be if the gas was being produced and measured through a six-inch casing; "closed pressure" means the maximum pressure that results from closing in the well; a "wildcat well" is a well drilled in unproven territory; whenever under the provisions of this Act or the regulations hereunder, the approval or permit from the Supervisor of the Board is referred to, it shall mean and require that same be in writing.

SECTION 46. *Purpose of Act defined.*—The purpose of this Act is hereby stated to be to conserve the resources of oil and gas in the State of Mississippi and to aid and encourage the development of the oil and gas industry in this State, and the provisions of the Act shall be construed, and the regulations authorized hereunder shall be promulgated, to this end.

SECTION 47. *Constitutional provisions.*—If any of the provisions, sections, subdivisions, rules or part of this Act, or rule or regulation adopted or readopted by the State oil and gas board under authority granted by this Act shall be held unconstitutional, or for any other reasons shall be held void, such holding shall not invalidate any section, subdivision, rule or part of this Act, or rule or regulation adopted or readopted by the State Oil and Gas Board under authority granted by this Act.

SECTION 48. This Act shall take effect and be in force from and after its passage.

STATE OF MONTANA

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STATE OF MONTANA

ACT OF FEBRUARY 27, 1925

AN ACT regulating the drilling and operation of oil and gas wells, relating to the conservation of oil and natural gas, providing for the administration of the act by the board of railroad commissioners of the State of Montana, and repealing sections 3547, 3548, 3553, and 3554, of the Revised Codes of Montana, 1921. (Approved February 27, 1925; ch. 56, Laws of Montana, 1925.)

Railroad commissioners to prescribe and enforce rules for oil and gas wells—Rules those prescribed by Bureau of Mines or Secretary of Interior.

SECTION 1. For the purpose of conserving the natural resources of the State and to prevent waste thereof through negligent methods of operation, the board of railroad commissioners of the State of Montana shall prescribe and enforce rules and regulations governing the drilling, casing, and abandonment of oil and gas wells and the waste of oil and gas therefrom upon all lands in the State of Montana, excepting public lands subject to the act of Congress approved February 25, 1920 (Public, 146). The rules and regulations so prescribed shall be those from time to time adopted by the Bureau of Mines or by the Secretary of the Interior of the United States [1] pursuant to said act of Congress governing methods of operations of operators upon lands embraced within permits or leases issued under the provisions of said act of Congress, and it shall be the duty of all persons and corporations drilling or operating oil or gas wells upon patented or State land to comply with the said rules and regulations, to file with the board of railroad commissioners of the State of Montana all logs of wells and other reports required thereby, and to case, control, and plug all wells as therein prescribed.

When the rules and regulations aforesaid are duly adopted by and promulgated by said board of railroad commissioners, the same shall be, and all amendments and supplements thereto, made in the first instance by the said Bureau of Mines and thereafter adopted by and promulgated by the said board of railroad commissioners, shall be the rules and regulations of and by the authority of the State of Montana, acting through said board of railway commissioners.

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[1] See heading "United States" in this compilation.

[Oil and gas wells not public utilities.]

SEC. 4. That nothing herein contained shall in any manner be construed as constituting or attempting to constitute oil or gas wells as a public utility or utilities.

SEC. 5. That sections 3547, 3548, 3553, and 3554 of the Revised Codes of Montana of 1921 and all acts or parts of acts in conflict herewith are hereby repealed.

SEC. 6. This act shall take effect and be in force from and after its passage and approval.

(Approved February 27, 1925.)

ACT OF MARCH 9, 1927

CH. 108, LAWS OF MONTANA, TWENTIETH LEGISLATIVE ASSEMBLY, P. 361, AUTHORIZING STATE LAND COMMISSIONERS TO LEASE STATE LANDS FOR OIL AND GAS

Oil not to be wasted.

SEC. 1. * * * Oil and gas leases issued under the provisions of this act shall all be subject to the conditions that the lessee in conducting his explorations and mining or drilling operations shall use all reasonable precautions to prevent waste of oil or gas developed in the land or the entrance of water through wells drilled by him to the oil or gas sands or oil or gas bearing strata to the destruction or injury of the oil or gas deposits. Violations of any of these conditions shall constitute grounds for the forfeiture of the lease after hearing had thereon before the State board of land commissioners. (P. 362.)

* * * * * * *

Drilling required of lessee upon completion of a commercially productive well.

SEC. 11. The lessee shall be required, upon completing a commercially productive oil or gas well upon the leased premises, to proceed with reasonable diligence to drill such additional wells to the depth of the formation found commercially productive or to such depth as may be necessary to economically test, develop, and operate the deposits discovered. No lessee shall, however, be required to drill to completion more than one well under any one lease during any one calendar year, or a total number of wells under any one lease in excess of the total number of 40-acre subdivisions of land held under such lease; and, as to lands found valuable for gas production only,

the drilling obligation of the lessee shall be confined to a total number of wells equal to the total number of tracts comprising 160 acres of land included in the lease; except, as the drilling of offset oil or gas wells necessary to protect the leased premises and deposits from loss or depletion due to wells drilled on contiguous lands shall require greater diligence in drilling and a greater number of wells to be drilled: *Provided*, That the performance of said well drilling operations may be suspended only by and with the consent of the State board of land commissioners during the time oil or gas previously discovered can not be marketed at a profit or for other good cause shown. (Pp. 366, 367.)

SUMMARY OF REGULATIONS

APRIL 22, 1927

Section 1: Powers and duties of supervisor.

(A) "To visit from time to time lands where operations for the discovery or production of oil and gas are conducted, to inspect and supervise such operations with a view to preventing waste of oil and gas, damage to formations or deposits containing oil, gas, or water or other mineral deposits, injury to life or property, or economic waste; and to issue, in accordance with the provisions of existing regulations, such necessary instructions to operators as will effectively prevent such waste or damage."

(B) To make reports to the board.

(C) To prescribe the manner and form of operators' reports.

(D) To require tests to detect waste.

(E) "To require the correction, in a manner to be prescribed or approved by him, of any condition existing subsequent to the completion of a well which is causing or is likely to cause damage to any formation bearing oil, gas, water, or other mineral deposits or which is dangerous to life or property or wasteful of oil or gas."

(F) "To determine the percentage of the potential capacity of any gas well which may be utilized when, in his opinion, such action is necessary to protect the gas-bearing formations. He shall likewise specify the time and method for determining the potential capacity of gas wells."

(G) To advise operators.

(H) To compile production records.

(I) "To require, by written notice, immediate suspension of any operation or practice contrary to the requirements of these regulations, or to the written orders of the supervisor or his representative until the operator shall have complied with such requirements or orders."

Section 2: Requirements for operators.

(A) "The operator on State lands shall conform to the terms of his lease and all operators shall conform to these regulations and to the written instructions of the supervisor or his representative and shall take precautions to prevent waste of oil or gas, damage to formations or deposits bearing oil, gas, water, or other mineral deposits, injury to life or property, or economic waste."

(B) To designate a local agent.

(C) "The operator shall not drill any well within 220 feet of any of the outer boundaries of the land being developed except as may be necessary to protect himself against offset wells on other lands and then only on consent first had in writing from the supervisor."

(D) The operator shall not begin to drill, redrill, make water shut off or formation test, deepen, shoot, plug, or abandon any well, or alter the casing in it without first notifying the supervisor of his plan or intention and receiving approval prior to commencing the contemplated work; provided, however, that before the operator shall begin to drill any well, the operator shall file with the board a good and sufficient bond, to be approved by the board, in the principal sum of five thousand ($5,000) dollars, payable to the State of Montana, and conditioned that the operator shall fully comply with the regulations of the board prescribed pursuant to the provisions of chapter 56, Session Laws of 1925, and (*a*) file with the board a separate notice of intention to drill embodying the drilling plan of each well; and (*b*) not begin drilling until the plan has been approved by the board's representative or supervisor; and (*c*) carry on all operations in accordance with approved methods and practice in conformity with the operating regulations of the board, to the satisfaction of the supervisor; and (*d*) carry out, without expense to the State of Montana, all reasonable orders of the board or its authorized representative; and (*e*) take all reasonable precautions to prevent waste of oil or gas, damage to formations or deposits bearing oil or gas, or water, or other mineral deposits, injury to life or property, or economic waste; and (*f*) repair promptly, so far as possible, any damage to mineral deposits or mineral-bearing formations resulting from operations conducted by said operator;

provided, however, that the board may permit self-insurance whenever, in its opinion, the financial ability of the operator, as shown to the board under oath, so warrants. (As amended Dec. 31, 1931, effective Jan. 15, 1932.)

(E) To mark rigs with an identification sign and to mark abandoned wells with a monument.

(F) To keep and file drilling records.

(G) To provide high-pressure fittings before drilling in wildcat territory or high-pressure areas.

(H) To provide a slush pit for mudding when drilling with cable tools.

(I) To provide an auxiliary mud pit for heavy emergency drilling with rotary tools.

(J) To shut off water from oil and gas strata and test for productivity all oil or gas bearing formations.

(K) To protect upper productive strata before deepening a well.

(L) To prevent any oil or gas well from blowing open.

(M) To eliminate, so far as possible, the formation of emulsion.

(N) To prevent pollution of streams or surface land.

(O) To provide tanks for gaging oil run from leased State land.

(P) To abandon a well only after written permission of the supervisor.

(Q) The operator shall prevent the waste of natural gas or its wasteful utilization. The use of gas in its natural state in engines, pumps, or similar equipment where its pressure is the direct operating force is prohibited unless the exhaust gas is conserved for use as fuel or unless special permission is obtained from the supervisor.

(R) To exercise precaution against accidents and fires.

(S) To obey all orders of the supervisor, subject to right of appeal under section 5.

Section 3: To pay royalties to the State on State lands in accordance with the lease (OMITTED).

Section 4: To make reports on operations (forms described) (OMITTED).

Section 5: Appeal to the Board of Railroad Commissioners of Montana may be had within 30 days of the supervisor's order (OMITTED).

ANNOTATIONS TO OMITTED STATUTES: *Laws 1921, chap. 125 (Rev. Code, 1921, secs. 3550–3552):*

This statute, which prohibited the "use, consumption, or burning of natural gas" without full utilization of heat contained therein, declared such uses to be "wasteful and extravagant," and prohibited sales for such purposes and imposed penalties, was declared unconstitutional in *Gas Products Co.* v. *Rankin*, 63 Mont., 372, 207 Pac. 993, 24 A. L. R. 294 (1922).

STATE OF NEW MEXICO

LEGISLATION—	PAGE
1925: March 19, 1925; Laws of 1925, ch. 121, p. 230	243
1929: March 12, 1929; Laws of 1929, ch. 132, p. 314	247
1929: New Mexico Stats. Ann., Compilation of 1929	245
REGULATIONS—	
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STATE OF NEW MEXICO

ACT OF MARCH 19, 1925

AN ACT providing for the appointment of a State geologist and inspectors by said State geologist and by the board of county commissioners, regulating drilling operation, and plugging of oil and gas wells, fixing penalties for the violation of this act, and repealing chapter 144, New Mexico Session Laws of 1921. (Approved March 19, 1925; Chap. 121, Laws of 1925.)

NOTE.—Sections 1 to 9 of this act appear in 1929 New Mexico Statutes Annotated (pp. 1287, 1288) as 97-101 to 97-109.

Appointment of State geologist.

SECTION 1. The Governor of the State of New Mexico is hereby authorized to appoint a State geologist, who in turn is hereby authorized to appoint, with the approval of the commissioner of public lands, such inspectors, clerks, and additional assistants as he may deem necessary to properly carry out the provisions of this act. * * *

State geologist to prescribe and enforce rules governing drilling, casing, and abandonment of oil and gas wells and waste therefrom.

SEC. 2. For the purpose of conserving the natural resources of the State and to prevent waste thereof through negligent methods of operation, the State geologist shall prescribe and enforce rules and regulations governing the drilling, casing, and abandonment of oil and gas wells and the waste of oil and gas therefrom upon all lands belonging to the State of New Mexico, which shall have the effect of law. The rules and regulations so prescribed shall be those from time to time adopted by the Bureau of Mines or by the Secretary of the Interior of the United States pursuant to the act of Congress of February 25, 1920, known as the "leasing act," governing the methods of operations of operators upon lands embraced within permits or leases issued under the provisions of said act of Congress, and such additional rules and regulations as may be deemed proper by the State geologist, and it shall be the duty of all persons and corporations drilling or operating oil or gas wells upon any privately owned or leased lands or State lands to comply with the said rules and regulations, to file with the State geologist all logs of wells and other reports required thereby, together with

samples of drill cuttings when requested, and to case, control, and plug all wells as therein prescribed.

Inspectors.

SEC. 3. All inspectors to whom shall be delegated the duty of enforcing the provisions of this act concerning actual field operations on State lands shall be under the general supervision of the Comissioner of Public Lands and shall be properly qualified as such and shall receive their actual traveling expenses, in addition to their regular salaries. The State geologist may from time to time delegate his authority to supervise the abandonment of wells or the extinguishment of fire to an inspector of the United States Bureau of Mines, who shall receive no compensation other than traveling expenses.

Enforcement of rules and regulations.

SEC. 4. The rules and regulations prescribed by the State geologist shall also apply to all privately owned or leased lands in the State, and it shall be the duty of the county commissioners of the various counties to enforce the same. Said county commissioners shall be privileged to delegate their authority in such matters to the State geologist or to an inspector of the United States Bureau of Mines.

County oil and gas inspectors.

SEC. 5. In each county in this State the board of county commissioners is hereby authorized, in its discretion, to appoint a suitable and competent person, with approval of the State geologist, who shall not be interested privately in producing, piping, or selling oil or natural gas, to be known and designated as the "oil and gas inspector" of such county, who shall serve at the pleasure of the board from the date of his appointment and qualification. * * *.

Duties of inspector.

SEC. 6. It shall be the duty of such inspector (oil and gas inspector, provided for each county) to see that all provisions of law and that all the rules and regulations prescribed by the State geologist pertaining to the drilling for oil or gas, the regulating of oil or gas wells on all privately owned or leased lands in such county, and the piping and consumption of oil or natural gas are faithfully carried out, and that the penalties of such laws are enforced against all violators of the same and to that end he shall promptly report all violations of such laws that come to his knowledge to the district attorney of his county and file proper complaint for the prosecution of the offenders.

SEC. 7. Omitted; relates to compensation of inspectors.

Powers and authority.

SEC. 8. Such inspector shall have power and authority to enforce the laws and the rules and regulations prescribed by the State geologist relating to the drilling and regulation of oil and gas wells and the piping and consumption of oil and natural gas and all other rules and regulations of said State geologist; and in the event of failure of the operator to comply with the requirements and instructions of any inspector, such inspector shall have the authority, and it is hereby made his duty, to take such steps, make such repairs, and conduct such operations as may in his judgment be necessary to enforce the said laws, rules, and regulations; and the said inspector shall have a lien upon said well or pipe line, and all wells with which the same may be connected, for his fees, for the material, repair, and cost incurred in the enforcement of said laws, rules, and regulations, for all costs of suit and reasonable attorney's fees in any action which may be maintained by said inspector in any court of competent jurisdiction for the enforcement of said laws, rules, and regulations.

SEC. 9. Omitted; provides a penalty for violation of any provision of the act.

Prior law repealed.

SEC. 10. Chapter 144 of the Session Laws of New Mexico of 1921 is hereby repealed.

Invalidity of part of act not to render the whole invalid.

SEC. 11. Should any provision of this act be declared invalid by a court, such an act of the court shall not affect any other provision herein unless so expressly declared by such court, it being the intention of the legislature to give effect to the valid provisions of this act regardless of the invalidity of any other provision.

SEC. 12. Omitted; provides that the act shall be deemed an emergency act and shall take effect immediately after its passage and approval.

(Approved March 19, 1925.)

CHAPTER 97, NEW MEXICO STATUTES ANNOTATED, COMPILATION OF 1929

ARTICLE 2. REGULATION OF WELLS

NOTE.—This article of the compilation embraces the act approved June 8, 1912, entitled "An act regulating the casing of oil and gas wells and the mode of plugging the same when abandoned."

97–201. Wells—Mode of casing.

That the owner or operator of any well put down for the purpose of exploring for and producing oil or gas shall, before drilling into the oil or gas bearing rock, incase the well with good and sufficient casing, and in such manner as to exclude all surface or fresh water from the lower part of such well, and from penetrating the oil or gas bearing rock. Should any well be put down through the first into a lower oil or gas bearing rock, the same shall be cased in such manner as will exclude all fresh or salt water from both upper and lower oil or gas bearing rocks penetrated.

97–202. Wells—Plugging.

The owner of any well, when about to abandon or cease operating the same, for the purpose of excluding all fresh or salt water from penetrating the oil or gas bearing rocks, and before drawing the casing shall fill the well with sand or rock sediment to the depth of 10 feet above the top of each oil or gas bearing rock, and drive therein a round tapered, seasoned wooden plug at least 2 feet in length and in diameter equal to the full diameter of the well below the casing, and immediately upon drawing the casing shall fill in on top of such plug with sand or rock sediment to the depth of 5 feet, and again drive into the well a round wooden plug 3 feet in length, the lower end tapering to a point and to be of the same diameter at the distance of 18 inches from the smaller end as the diameter of the well above the point at which the casing rested and the plug is driven; and after such plug has been driven the well shall be filled with sand or rock sediment to the depth of not less than 20 feet.

97–203. Wells—Abandoned—Failure to plug.

Whenever any person may be injured by the neglect or refusal to comply with the provisions of the preceding section it shall be lawful for such person, after notice to the owner, lessee, or caretaker of the premises upon which such well is located, to enter upon and fill up and plug such well in the manner provided in this chapter, and thereupon to recover the expense thereof from the person or persons whose duty it was to plug or fill up such well in like manner as debts or such amounts are recoverable, and shall have a lien upon the fixtures and machinery and leasehold interests of the owner or operator of such well.

97–204. Wells—Failure to case or plug—Penalty.

Any person, owner, driller, or operator violating the provisions of the first or second section of this chapter, shall be deemed guilty

of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $500 or by imprisonment for a period not exceeding six months, or by both such fine and imprisonment, at the discretion of the court.

ACT OF MARCH 12, 1929

AN ACT relating to the conservation of oil and gas and the prevention of waste thereof, and authorizing agreements made for such purpose among oil and gas operators and royalty owners in the same pool. (Approved March 12, 1929; ch. 132, Laws of 1929, p. 314.)

[*Sec. 1. Cooperative agreements.*]

Agreements made in the interest of conservation of oil and gas, or the prevention of waste, between and among operators owning separate holdings in the same oil and gas pool, or in an area that appears from geological or other data to be underlaid by a common accumulation of oil or gas, or both, or between and among such operators and royalty owners therein for the purpose of bringing about the development and operation of said pool, or area, or any part thereof, as a unit or establishing and carrying out a plan for the cooperative development and operation thereof, when such agreements are approved by the State geologist, are hereby authorized and shall not be held or construed to violate any of the statutes of this State relating to monopolies or contracts and combinations in restraint of trade.

[*Sec. 2. Royalties.*]

When such agreements as are described in section 1 of this act relate to an oil and gas pool wherein are situated lands in which the State owns mineral or royalty interests the commissioner of public lands is hereby authorized to enter into such agreements as a party thereto, on behalf of the State, when in his judgment the best interests of the State will be served thereby.

[*Sec. 3. Emergency.*]

That it is necessary for the preservation of the public peace and safety of the inhabitants of the State of New Mexico that the provisions of this act shall become effective at the earliest possible time, and, therefore, an emergency is hereby declared to exist and this act shall take effect and be in full force from and after its passage and approval.

NOTE.—Sections 1 and 2 of this act appear in New Mexico Statutes, Annotated, 1929, pages 1290, 1291, as 97–601 and 97–602.

SUMMARY OF REGULATIONS

BULLETIN 1–B, NEW MEXICO STATE LAND OFFICE, 1931

PAGE 3: United States regulations dealing with oil and gas on Government lands to be observed so far as applicable on State and patented lands.

PAGE 7: Waste of oil and gas prohibited: "Oil and gas shall not be produced or used in any manner or under any conditions that shall cause waste. By waste is meant: The escape of natural gas in commercial quantities into the air; the drowning with water of a gas stratum capable of producing gas in commercial quantities; the escape underground of oil and gas; permitting gas to burn unnecessarily or wastefully; etc."

PAGE 8: Approved methods of preventing waste to be used: "All persons and companies drilling for and producing oil and gas shall take all possible precautions and use the most effective methods to prevent and stop loss and waste of oil and gas during drilling, production, storing, piping, and distributing."

PAGE 8: All wells to be designated by signs.

PAGE 8: Spacing of wells: "Wells drilled for oil and gas shall not be drilled closer than 200 feet from any property or lease boundary and not closer than 300 feet from any other completed or drilling wells, except by special permission."

PAGE 8: Offset wells on State lands to be drilled.

PAGE 8: Pit for shale drill cutting is required to assure a supply of mud for confining oil and gas, or for use in abandonment.

PAGE 9: Production of oil and gas from different strata: "No well shall be permitted to produce oil or gas, or both, from different strata except under conditions which will not result in waste or damage."

PAGE 9: Strata to be sealed off: "No well shall be drilled through or below any oil, gas, or water stratum, regardless of its thickness, without sealing it off and confining its contents after passing through the stratum. This may be accomplished by the use of mud-laden fluid, or cement, or by casing and packers."

PAGE 9: Wells to be shot in such manner as not to injure formation or casing.

PAGE 9: Water shut-offs to be made in approved manner.

PAGE 9: Density of mud-laden fluid prescribed.

PAGE 9: Use of mud-laden fluid in setting casing on order of State geologist or oil and gas inspector.

PAGE 10: Drilling into a productive stratum with water standing in the hole prohibited.

PAGE 10: Mudding required prior to pulling casing.

PAGE 10: Abandoned wells to be plugged under supervision of the State geologist.

PAGE 10: Advance precautions for high pressures required.

PAGE 10: Proper anchorage for casing required.

PAGE 10: Oil and gas strata to be separately cased.

PAGE 11: Use of vacuum pumps prohibited without consent of adjacent owners and State geologist.

PAGE 11: Artesian water to be protected.

PAGE 11: Protection of gas deposits: "Gas in commercial quantities encountered in wells drilled for oil and gas shall be confined to its original stratum until such time as it can be utilized to advantage. All gas strata shall be protected from infiltrating water."

PAGE 11: All gas produced to be metered.

PAGE 11: Gas wells to be blown free of water once a week, if necessary.

PAGE 11: Restrictions on gas production: "The production from any gas well shall not exceed 40 per cent of the potential capacity of the well as shown by the last quarterly gauge. Special regulations apply to the production of gas used for the manufacture of carbon black."

PAGE 11: Regulations to apply to wells spudded in before as well as after September, 1925.

PAGE 11: State geologist to prescribe additional regulations.

PAGES 12, 13, 14, 15, 16, 17, and 18: Reports and forms prescribed.

PAGE 19: Permits required for manufacture of carbon black.

PAGE 19: Conditions under which carbon black may be manufactured.

PAGE 19: Gasoline must be extracted prior to utilization of gas for carbon black.

PAGE 19: Production of gas for carbon black not to exceed 40 per cent of potential capacity or less, on the order of the State geologist.

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STATE OF NEW YORK

LEGISLATION— PAGE

1930: Cahill's Consol. Laws of 1930, ch. 21, art. 19, sec. 308 et seq. . 253

REGULATIONS—*None.*

Sec. 308. Plugging abandoned oil wells.

Whenever any well shall have been put down for the purpose of exploring for and producing oil or gas, upon abandoning or ceasing to operate the same, the owner or operator shall, for the purpose of excluding water from the oil or gas-bearing rock, and before drawing the casing, fill up the well with sand or rock sediment to the depth of at least 20 feet above the third sand or oil-bearing rock in case of an oil well, or any gas-bearing rock in case of a gas well; and in case of an oil well, drive a round, seasoned wooden plug, at least 2 feet in length, equal in diameter to the diameter of the well below the casing, to a point at least 5 feet below the bottom of the casing, and whether an oil or gas well, immediately after the drawing of the casing, shall drive a round, wooden plug into the well at the point just below where the lower end of the casing shall have rested, which plug shall be at least 3 feet in length, tapering in form, and to be of the same diameter at the distance of 18 inches from the smaller end as the diameter of the well below the point at which it is to be driven; and after it has been properly driven, shall fill in on top of same with sand or rock sediment to the depth of at least 5 feet: *Provided, however*, That this section shall not prevent the use of any such well for the operation known as "flooding," in lieu of plugging, if such flooding be done according to the recognized proper methods, and if the owner or operator of the well shall have filed with the clerk of the town in which the well is situated, when the taking of oil therefrom has ceased, a statement in writing that the well, to be designated with common certainty, is reserved for purposes of flooding, and if such owner or operator shall have begun, in good faith, the flooding of such well within three months after the taking of oil therefrom has ceased. (As amended, Laws of 1919, ch. 252, April 17, 1919.)

Sec. 309. Penalty for neglecting to plug abandoned well.

Any person who shall violate the provisions of the last section shall, upon conviction thereof, be deemed guilty of a misdemeanor,

and be punished by a fine of not less than $200 nor exceeding $500, or by imprisonment in the county jail of the county where the conviction shall be had for a time not exceeding one year, or both such fine and imprisonment, in the discretion of the court before whom such conviction shall be had; one-half of the fine so imposed to be paid to the informer, the residue to the use of the school district in which such well may be situated. (Laws, 1879, ch. 217, sec. 2, as amended by Laws, 1882, ch. 64.)

Sec. 310. Adjoining proprietor may act.

Whenever any owner or operator shall neglect or refuse to comply with the provisions of section 308 of this article, the owner of or operator upon any land adjoining that upon which such abandoned well may be, may enter, take possession of such abandoned well, and plug the same, as provided by this article, at the expense of the owner or operator whose duty it may be to plug the same. (Laws, 1879, ch. 217, sec. 3, as amended by Laws, 1882, ch. 64.)

ANNOTATION TO OMITTED STATUTE:

There is no New York statute regulating correlative rights of common owners of an oil pool. However, a statute regulating withdrawals from underground reservoirs of mineral water containing carbonic acid gas (Laws 1908, vol. 2, p. 1221, ch. 429) was sustained in *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61, 31 Sup. Ct. 337, 55 L. Ed. 369 (1911). See also *Hathorn* v. *Natural Carbonic Gas Co.*, 194 N. Y. 326, 87 N. E. 504, and *People* v. *New York Carbonic Acid Gas Co.*, 196 N. Y. 421, 90 N. E. 441.

STATE OF OHIO

LEGISLATION— PAGE

1926: Page's Annotated General Code, vol. 1, ch. 11, p. 378 . . 257
1926: Page's Annotated Code, vol. 1, ch. 22, p. 2476 . . . 265
1931: Laws 1931, p. 603, amending code 257

STATE OF OHIO

PAGE'S ANNOTATED OHIO GENERAL CODE, 1926

VOL. 1, CH. 11, P. 378, TITLE, "CHIEF INSPECTOR OF MINES."

AS AMENDED BY LAWS 1931, P. 603

NOTE.—The powers of the chief inspector of mines were transferred to the Industrial Commission of Ohio. See General Code, secs. 871–11 and 871–24.

Sec. 898–5. Jurisdiction of the department of industrial relations, division of mines, State of Ohio, over mines, quarries, oil wells, and gas wells.

The department of industrial relations, division of mines, shall have jurisdiction over all mines, quarries, oil wells, and gas wells located in the State of Ohio, and shall exercise such supervision over them and their development and operation as the provisions of the General Code of Ohio shall designate.

Sec. 898–12. Designation of coal-bearing townships.

The chief, division of mines, shall designate the townships in the various coal-bearing counties of Ohio which shall be considered coal-bearing townships.

Sec. 898–30. Duties of the division of mines and district inspectors relating to oil and gas wells in coal-bearing townships.

The oil and gas well inspector and the respective district mine inspectors shall, under the direction of the chief, division of mines, enforce all laws relating to the location, drilling, maintenance, operation, and abandonment of oil and gas wells in coal-bearing townships.

Sec. 898–174. Relating to oil and gas well inspector and oil and gas wells.

The laws relating to oil and gas wells shall be administered by the oil and gas well inspector who is in service as such upon the effective date of this act, under the supervision and direction of the chief, division of mines. The salary of the oil and gas well inspector shall be not less than two thousand dollars per

year and the civil service commission of Ohio shall establish a separate classification of oil and gas well inspectors and the civil service commission shall immediately place the oil and gas well inspector now in service under such classification without further examination, and shall not place any other person in the future under such classification or list until they have taken and satisfactorily passed an examination of their fitness to act as an oil and gas well inspector. The civil service commission shall put into effect rules for such classification, one of which rules shall provide for and govern increases in salary of the oil and gas well inspector upon each year and additional year of service as oil and gas well inspector, and the director of industrial relations in fixing the salary of such oil and gas well inspector shall be governed by the rules and findings of the civil service commission as herein stated.

Sec. 898–175. Qualifications of oil and gas well inspector.

The oil and gas well inspector herein provided for shall be a citizen of the United States and a resident of the State of Ohio for at least two years, have had at least five years' actual experience in mining, shall have a practical knowledge of the operation of oil and gas wells and be familiar with the provisions of the oil and gas well law.

Sec. 898–176. Definition of a coal-bearing township.

The chief, division of mines, shall designate as provided in section 898–12 of this act as coal-bearing townships the townships in which coal is being mined or in which coal is found in such thickness as to make the mining of such coal probable at some future time, and in so designating, shall designate such township as a unit. The term township as used in this act refers to the civil township as defined in section 3244 and the following sections of the General Code of Ohio. The term coal-bearing township as used in this act shall mean a township which has been designated by the chief, division of mines, as such under the provisions of section 898–12 in this act.

Sec. 898–177. Obtaining information as to coal-bearing townships and reports of coal seams.

Any person, firm, or corporation drilling a gas, oil, or test well after the effective date of this act shall before starting such drilling, obtain information from the chief, division of mines, as to the location of the coal-bearing townships in this State.

Sec. 898–178. Application of provision of the act.

Any person, firm, or corporation who drills a well in a coal-bearing township whether or not such well passes through any coal or

whether or not the well is commenced below the line of the outcrop of the coal, shall locate such well and map and abandon such well in accordance with the regulations and provisions of this act and the provisions of this act shall apply uniformly throughout any coal-bearing township.

Sec. 898–179. Supervision of oil and gas well inspector.

The oil and gas well inspector under the supervision of the chief, division of mines, shall in coal-bearing townships supervise the granting of permits to drill or abandon oil or gas wells, the filing of abandonment reports, the filing and reprinting of oil, gas, or test well maps, and see that all the provisions relating to the location, mapping, drilling, and abandonment of such wells are strictly complied with in each case. Where the plugging method, as outlined in this act can not be applied, or if applied would be found ineffective in carrying out the protection which the law is meant to give, the oil and gas well inspector may designate the method of plugging to be used in all such cases. The abandonment report shall show the manner in which the well was plugged.

Sec. 898–180. Permit prior to drilling.

Any person, firm, or corporation, before drilling or causing to be drilled any oil well, gas well, or test well, within the limits of any coal-bearing township, in any county in the State of Ohio, shall first file an application with the division of mines, on blanks to be furnished by the oil and gas well inspector for such purpose, and shall show the following: The name and address of the applicant, the date of application, the location of the proposed well, giving the name of the property owner, section number, township and county, the number or numbers of the proposed well or wells and signed by an officer or agent of such operator. No well shall be commenced until the applicant or operator has been granted a permit to drill, which shall be granted by the division of mines under the provisions of this act.

Sec. 898–181. Permit and mapping of drilling location.

If such proposed well is not located within the limits of a mining operation, but within the limits of any coal-bearing township, the oil and gas well inspector shall grant a permit immediately upon receipt of application, providing the applicant is a responsible person, firm, or corporation. The oil and gas well inspector may at any time, even after the well is commenced, if the responsibility of the applicant or operator is considered doubtful, cause such applicant or operator to show proper guarantee satisfactory to the chief, division of mines,

of his intention to fulfill the requirement of this section or cause all operations to cease forthwith. If any person, firm, or corporation continues drilling on property already surveyed, in accordance with the preceding requirements, a blueprint or copy of map, shall be made at the end of each year ending June 30, showing the additional wells, properly surveyed by a competent engineer as above mentioned, and filed with the division of mines not later than the following first of September, except when a well or wells are to be abandoned, a map showing location of such well or wells shall be filed within thirty days with the division of mines after commencing to plug and fill same, except when an extension of time is given by the chief, division of mines.

Sec. 898–182. Permit to drill.

If such proposed well is located within the limits of a mining operation in a coal-bearing township such limits to be determined by the chief, division of mines, the application for permit to drill must show the name of mine and company operating such mine, and shall be accompanied by a map in duplicate showing the information as hereinafter required. Upon receipt of notice of application for permit to drill, together with maps showing location of proposed well, as herein provided, the chief, division of mines, shall immediately notify the owner or lessee of the mining operation upon which the proposed well is to be drilled, sending him a copy of the map furnished by the applicant. In case the owner, lessee, or agent of the mining operation objects to the location of proposed well, he shall notify the chief, division of mines, of his objection, giving the reasons therefor within six days. If, in the opinion of the chief, division of mines, the objections offered by the owner, lessee, or agent of the mining operation are sufficiently well founded, he shall request the applicant to change the location stating at the same time his opinion as to a possible new location to conform with section 898–183. In no event shall a permit be held up for a period in excess of ten days on account of a complaint of a coal operator.

Sec. 898–183. Drilling permits.

Any person, firm or corporation desiring to drill a well within the limits of a mining operation shall give consideration to the owner, lessee, or agent of the mining operation as provided in Section 898–182, and with due regard and consideration for the safety of the men working in such mine, and such shall be located, if possible, so as to penetrate a pillar of solid coal. No owner, lessee, or agent shall conduct his mining operations closer than twenty-five feet of any

known oil well, gas well, or test well, unless he obtains permission in writing from the chief, division of mines. No oil well, gas well, or test well shall be drilled nearer than three hundred feet of any opening of any mine used as a means of ingress or egress or ventilation for persons employed therein, nor nearer than one hundred feet of any building or inflammable structure connected therewith and actually used as a part of the operating equipment of such mine, except when permission is given by the chief, division of mines.

Sec. 898–184. Map.

Any person, firm, or corporation holding property in any coal bearing township, in any county of the State of Ohio, either in fee, by virtue of a lease for oil or gas, since January 1, 1900, or otherwise, whereon wells have been drilled for oil, gas or test purposes, shall cause to be made by a competent engineer a map on a scale not smaller than four hundred feet to the inch, and shall show the name and address of the person, firm, or corporation owning such well or wells; the county and township, range and section, name of the tract upon which well is located, and names of the adjoining property owners with the distance of the wells properly measured therefrom and checked from the section or quarter section lines, as will be necessary for an accurate survey. This shall not apply to wells already mapped. The map shall show the engineer's notations and angles, distances, starting points or corner stones, together with the numbers given the respective wells. The original map shall be retained by the owner or his agent and copy filed with the division of mines; except as provided in Section 898–182, such map shall show that same is accurate and correct. Such copy or copies shall contain a statement of the engineer making the map to the effect that the same is accurate and correct and such statement shall be sworn to and verified by such engineer and shall be certified as a true copy.

Sec. 898–185. Owner shall file log of well.

It shall be the duty of any person, firm, or corporation drilling within the limits of the coal-bearing townships and counties of the State to keep a careful and accurate log of the drilling of such well. Such log shall show the character and depth of the formation passed through or encountered in the drilling of such well and particularly show depth and thickness of the oil or gas bearing strata and various coal seams, indicating whether it is an oil or gas well or dry hole. A copy of such log shall be furnished the division of mines, within thirty days after the completion of such well. Such log shall be kept on file by the division of mines.

Sec. 898–186. Protection through workings.

In the event that a well penetrates the excavations of a mine, the hole shall be reduced approximately ten feet above the roof of the mine and a string of casing placed upon the shoulder so as to shut off all surface water, then drilling shall be continued to a point approximately thirty feet below the floor of the mine and another string of casing set. Both strings of casing shall be approximately the same diameter as the diameter of the hole, the casing shall be enclosed, if possible, with a column extending from the floor to the roof of such mine, built of brick or other suitable material as the case may require, subject to the approval of the chief, division of mines.

Sec. 898–187. Notification on abandonment.

When an oil well, gas well, or test well in any coal-bearing township is to be abandoned, the person, firm, or corporation owning such well shall notify the division of mines, as many days in advance as will be necessary for the oil and gas well inspector or district mine inspector to arrange to be present at such abandonment. No well shall be abandoned without an inspector being present unless permission has been granted by the chief, division of mines. The person, firm, or corporation shall at the same time notify the owners or agents of the adjoining land, the adjoining well owners or agents of their intention to abandon the well or wells, and of the time when they will be prepared to commence plugging and filling same.

Sec. 898–188. Method of plugging sand.

When any oil, gas, or test well is to be abandoned, it must first be plugged by filling the hole with rock sediment or properly prepared clay to a point above the oil or gas, sand, or rock formation and then there shall be placed or driven on top of the sediment or clay one or more seasoned wooden plugs or a lead plug as the case may require and such plug or plugs shall be placed or driven in such a manner, that the same shall be at the top of the oil or gas or rock formation, and will prevent the escape of gas or oil and will prevent water or destructive matter entering the oil or gas, sand, or rock formation. Such hole shall be filled at least one hundred feet above such plug or plugs or filled to the lowest casing seat with rock sediment or clay and such material used for such filling shall be properly prepared. After the first string of casing has been withdrawn from such well a wooden plug or iron ball of sufficient size shall be placed upon the casing seat and at least fifty feet of rock sediment or properly prepared clay placed upon such wooden plug or iron ball.

Sec. 898–189. Method of plugging coal.

If any well has passed through a vein or seam of coal, it shall, when it is abandoned be plugged in the following manner: A seasoned wooden plug shall be driven to a point fifty feet below the lowest seam of coal and the hole filled with properly prepared clay or rock sediment to a point at least twenty feet above this seam of coal at which point another wooden plug shall be placed and the hole filled for a distance of thirty feet with properly prepared clay or rock sediment. If there is more than one seam of coal the next seam above must be plugged off in like manner. When any well which has been drilled, is to be abandoned and has passed through the excavations of any mine, the person, firm, or corporation owning such well shall leave the casing in such well from a point thirty feet below the floor of such mine to a point at least fifteen feet above the roof of such mine or to the rock above the seam if roof conditions at such mine warrant the extension thereto. A seasoned wooden plug shall be driven to a point at least one hundred feet below the floor of such mine and the hole above such plug, together with the casing left in, which extends through the mine, shall be filled with properly prepared concrete then a seasoned wooden plug shall be driven on the top of such casing, and the hole filled with properly prepared concrete for a distance of not less than twenty feet.

Sec. 898–190. Casing which may be removed.

In the operation of a gas well or wells, it shall be permissible with the written consent of the chief, division of mines, to withdraw all casing in such well, leaving only the tubing and the packer therein, provided that such well or wells be filled with mud-laden fluid from top of such packer to the surface, as each succeeding string of casing in such well or wells is withdrawn. When the well penetrates the excavations of a mine, the casing shall remain intact as provided in Section 898–189. When such well is to be abandoned the hole shall be completely filled through the tubing from the bottom to the ground surface with mud-laden fluid.

Sec. 898–191. Abandonment reports.

On and after the effective date of this act any person, firm, or corporation who abandons an oil or gas well located within a coal bearing township in this State shall make a written report of such abandonment to the chief, division of mines, including in such report the date of abandonment, the name of the owner or operator of such well at the time of abandonment and his post-office address, the location of such well as to township and county and the name of the owner of the surface upon which such well is drilled, with the ad-

dress thereof, together with the date of the permit to drill, the date when drilled, whether or not such well has been mapped, the depth of same, the depth of the top of the sand to which the well was drilled, the depth of each seam of coal drilled through and a detailed report as to how such well was plugged, giving in particular the manner in which the coal and various sands were plugged, date of the plugging of such well, including therein the names of those who witnessed the plugging of the well. Such report shall be signed by the owner or operator or agent thereof, who abandons and plugs such well and the same shall be verified by the oath of the party so signing. For the purposes of this section, the district mine inspectors and the oil and gas well inspectors are hereby authorized to take acknowledgments and administer oaths to the parties signing reports required herein.

Sec. 898–192. Duties of district mine inspectors as to oil and gas wells.

It shall be the duty of the district mine inspectors and the oil and gas well inspector under the supervision of the chief, division of mines, to see that all the laws relating to the location, drilling and abandonment of oil, gas, or test wells are complied with and to obtain the strict enforcement of such laws or other regulations relating thereto.

Sec. 898–193. Appeal from ruling of the chief, division of mines.

Any person, firm, or corporation dissatisfied with the ruling of the chief, division of mines, or the oil and gas well inspector, under the provisions of the laws relating to oil and gas wells, shall have the right to appeal to the department of industrial relations of Ohio within ten days from the date of such ruling.

Sec. 898–303. Penalties.

Any person, firm, or corporation who violates or willfully refuses or neglects to comply with the provisions of Sections 898–177, 898–178, 898–180, 898–181, 898–182, 898–183, 898–184, 898–185, 898–186, 898–187, 898–188, 898–189, 898–190, or 898–191, shall upon conviction thereof, be fined not less than one hundred dollars nor more than five hundred dollars, and for a second or any subsequent offense shall be fined not less than two hundred dollars, nor more than one thousand dollars.

Sec. 898–304.

Any person, firm, or corporation who willfully refuses or neglects to comply with the designated method of plugging as defined in

Section 898–179 of this act, shall be fined not less than one hundred dollars nor more than five hundred dollars and for a second or any subsequent offense shall be fined not less than two hundred dollars, nor more than one thousand dollars.

Sec. 898–305.

Any owner, lessee, or agent or operator of any oil or gas well who willfully refuses or neglects to comply with the provisions of Section 898–182, or who violates the provisions of Section 898–183 of this act, shall, upon conviction thereof, be fined not less than one hundred dollars, nor more than five hundred dollars, and for a second or any subsequent offense shall be fined not less than two hundred dollars, nor more than one thousand dollars.

Sec. 898–14. Fines collected.

All fines collected by reason of prosecution begun under the provisions of this act, shall be paid to the chief, division of mines, and by him paid into the State treasury.

PAGE'S ANNOTATED OHIO GENERAL CODE, 1926

VOL. 1, CH. 22, P. 2476. TITLE, "NATURAL GAS, OIL, AND MINERAL WATERS"

Sec. 6311. Steel or wrought iron casing.

An owner of land when he drills a well for the production of petroleum oil, natural gas, or mineral water on his own land and the owner of any land and any contractor for such drilling where a well is drilled by contract with the owner of the land, or a lessee, owner of any land, by virtue of a lease, when such lessee drills any such well on land held by him under lease, and any contractor for such drilling where the well is drilled by contract with the lessee of land, or any other person drilling any such well, whether such owner, lessee, contractor, or other person be a person, copartnership, or corporation, before drilling into the oil or gas bearing sand or rock or after drilling through the oil or gas bearing sand or rock shall incase such well with good and sufficient wrought iron or steel casing so as to exclude all surface water and fresh or salt water, from any part of such well, penetrating the oil or gas bearing sand or rock.

Sec. 6312. (A) Abandonment requirements.

The owner or operator of any such well of a depth of more than 1,800 feet, who intends to abandon or cease operating it, shall, before

drawing the casing therefrom, securely fill such well with rock sediment to the top of the oil or gas bearing sand or rock, and shall then cause a wooden plug to be placed upon such rock sediment and securely driven with a stem, having a rig or machine moved in for the purpose; and shall carefully measure, for the purpose of making certain that such wooden plug is properly placed at the point above designated, and shall then, if the casing will permit, fill in upon said wooden plug with 200 feet of rock sediment; or up to the bottom of said casing.

NOTE.—Conviction and injunction for improper abandonment sustained in *State* v. *Oak Harbor Gas Co.*, 53 Ohio St. 347, 41 N. E. 584 (1895), revg. 18 Ohio Cir. Ct. R. 751, 4 O. C. D. 158 (1894), holding that it was not necessary to allege and prove drawing of casing, as abandonment could be shown by other facts.

(B) *Use of iron ball.*

After the casing has been drawn from such well, a wooden plug or iron ball of sufficient size shall be placed in such a manner as to rest upon the shoulder made by the casing, and at least 50 feet of rock sediment shall be placed upon such wooden plug or iron ball.

(C) *Use of cement.*

Wells of less depth than 1,800 feet shall be filled to a point 200 feet above the oil or gas bearing sand or rock with rock sediment or with mortar composed of 2 parts of sand and 1 part of cement, the same to be thoroughly tamped so as to fill the well, and upon which a wooden plug shall be driven that will completely fill the hole; after the casing has been drawn from such well a wooden plug or iron ball of sufficient size to fill the hole shall be placed in such manner as to rest upon the shoulder made by the casing, and at least 50 feet of rock sediment placed upon said wooden plug or iron ball.

(D) *No homestead exemptions.*

No owner or operator of any oil well or wells shall permit said well or wells to stand for a period of more than three months or to remain without diligently pumping or flowing the same for a period of more than three months. Should any such owner, operator, or lessee of any such well or wells allow the same to so remain for such period without diligently prosecuting the work of operating the same, which neglect might be injurious to the adjacent land and well owner by flooding the oil and gas bearing sand with fresh or salt water from leaks in the casing in such well, and on notice to such owner or operator of such well or wells to operate or prevent such leaks in such casing and prevent the oil or gas bearing rock from being flooded from said well or wells, any owner or lessee

of any adjoining land or adjacent land, shall have the right to proceed against said party or parties for the penalty of $1,000 as provided in said section 6319 of this chapter, and in the mode and manner therein provided, and there shall be no homestead or other exemptions allowed against the recovery thereof.

Sec. 6313. Court action.

If such lessee, or any contractor under him, or other person operating such well fails to comply or inefficiently complies with the next preceding section, the owner of the land upon which such well is situated may comply therewith. If all the persons whose duty it is to plug and fill such well fail to so fill or inefficiently so fill such well, the owner of such land or any person, the owner of adjoining land or lands adjacent to the lands on which any such well is located, or the lessee of any such lands under a lease for oil or gas, after written demand therefor to any of such persons, may enter and take possession of such well and fully comply with such section. Any court of competent jurisdiction of the county where such well is situated, upon the application of the owner or lessee of such land or the owner or lessee of lands adjoining or adjacent to the lands on which such well is located, may enjoin the removal of the derrick, boilers, fixtures, machinery, and equipment used for the drilling or operation of such well when it is made to appear to the court that the owner or person having the same in charge is about to or will remove the same before plugging and filling such well as provided in the next preceding section. The plaintiff shall not be required to give an injunction bond in any such proceeding.

Sec. 6314. (A) *Expense of filling; how paid.*

The reasonable cost and expense of so filling such well shall forthwith be paid by the owner of such land, if such owner is the owner of the well or by the contractor or operator drilling or operating such well for or under such owner, and all such persons shall be jointly and severally liable therefor; if such well is drilled by a lessee or owner by virtue of a lease or by an operator or contractor under such lessee, such cost and expense shall forthwith be paid by such lessee or the operator or contractor drilling or operating such well for or under such lessee, and all such parties shall be jointly and severally liable therefor. The amount of such cost and expense shall be a lien upon the fixtures, machinery, and appliances used in drilling or operating such well and leasehold or other interest of the lessee, contractor, and operator and upon the interest of the landowner in the land upon which the well is situated, if such well owner is the owner of such well, and may be recovered and enforced against

the owner, lessee, contractor, or operator, and such landowner in the order named.

(B) *No exemptions.*

No such interest or property shall be exempt from execution under any law of this State or be held or claimed as a homestead or other exemption as against such lien. The court of common pleas of the county in which such well is situated shall have full jurisdiction to try and determine the amount of such claim and enforce the lien thereof upon the property aforesaid and service of summons may be made upon any and all parties liable as aforesaid in any county or counties of this State in which they may be found or located; and it shall not be necessary for the party bringing such suit or action to allege in the petition or prove on the trial that any of the water from such well, either surface, fresh, or salt water, penetrated the oil or gas bearing sand or rock under the land or lands, or oil or gas lease or leases on the land or lands of which the plaintiff may be the owner or lessee.

Sec. 6315. Confinement of natural gas in well until utilized.

A person, copartnership, or corporation in possession as owner, lessee, agent, or manager of a well producing natural gas, in order to prevent the gas wasting by escape, shall shut in and confine the gas therein, within 10 days after penetrating the gas-bearing rock, until such time as it is utilized for light, fuel, or power purposes.

Sec. 6316. Does not apply to oil well.

The provisions of the next preceding section shall not apply to an oil well.

Sec. 6317. Flambeau light is prohibited.

A person, copartnership, or corporation shall not use natural gas for illuminating purposes on flambeau lights; but "jumbo" burners or other burners consuming no more gas than such "jumbo" burners may be so used. A person, copartnership, or corporation consuming natural gas with such burners in the open air or in or around derricks, shall turn it off not later than 8 o'clock in the morning of each day such lights or burners are used, and shall not turn on or relight it between the hours of 8 o'clock a. m. and 5 o'clock p. m.

Sec. 6318. Proviso.

The next preceding section shall not prohibit the burning of flambeau lights within the derrick of a drilling well or for lighting the streets of cities and villages.

Sec. 6319. (A) *Penalty for violation of section 6312.*

Any person, copartnership, or corporation violating any provisions of section 6312 shall be liable to a penalty of $1,000, to be recovered, with costs of suit, in a civil action in any court of competent jurisdiction in the county in which the act shall have been committed or omitted. Such suit shall be brought on the relation of any person, copartnership, or corporation owning the land or lease upon which any such well is located or who is the owner or lessee of land adjoining or adjacent to the land on which such well is located or is the lessee of any such lands under a lease for oil or gas. Any such person, copartnership, or corporation failing for a reasonable time to bring such suit after any such violation and to prosecute the same with all convenient speed, such suit may be brought at the instance of any other resident of this State, but in no case shall the party bringing such suit be required to give security or be liable for costs.

(B) *Penalty a lien upon fixtures, etc.*

Such penalty shall be a first lien upon the fixtures, machinery, and appliances used in drilling or operating such well, and the leasehold or other interest of the lessee, contractor, and operator, and upon the interest of the landowner, if such landowner is the driller or operator of such well in the land upon which the well is situated. No such interest or property shall be exempt from execution under any law of this State or be held or claimed as a homestead or other exemption as against such lien. If after a period of six months from the time of default in plugging and filling such well the same be not plugged and filled in accordance with the provisions of said section, such default and neglect shall constitute additional offense and shall subject the person so offending to a like penalty, to be recovered as herein provided for the recovery of a penalty for a first offense.

(C) *Penalty.*

A person, copartnership, or corporation violating any other provision of this chapter shall be liable to a penalty of $100, to be recovered, with costs of suit, in a civil action in the name of the State in the county in which the act was committed or omitted. Such suit may be brought at the instance of a resident of this State without security or liability for costs. Such penalties shall be paid into the school fund of the county in which the suit is brought.

Sec. 6319–1. Notice of abandonment.

When any person, copartnership, or corporation, required by the provisions of this chapter to plug and fill a well, is about to abandon

any such well, such person, copartnership, or corporation, prior to abandoning such well and before commencing to plug and fill it, shall notify the owner or owners of adjoining land and well owners in sufficient time for them to attend, of their intention to abandon the well or wells and of the time when they will be prepared to commence plugging and filling the same.

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STATE OF OKLAHOMA

OKLAHOMA STATUTES, 1931

VOLUME II, CHAPTER 59

ARTICLE 1: GAS PIPE LINES

Sec. 11507. Gas corporations.

Omitted.

NOTE.—A former statute (L. 1907, ch. 67) regulating gas pipe lines and prohibiting transportation of gas out of the State, was held unconstitutional in *West* v. *Kansas Nat. Gas Co.*, 221 U. S. 229, 31 Sup. Ct. 564, 55 L. E. 716, 35 L. R. A. (N. S.) 1193. In *Haskell* v. *Kansas Nat. Gas Co.*, 224 U. S. 217, 32 Sup. Ct. 442, 56 L. Ed. 738 (1912), application was made for a modification of that decree so as to except from the injunction sections regulating the laying of pipe, pressures, etc. The application was denied, the Court holding all these sections to be part of a statute, "the main and controlling purpose" of which was invalid. Compare *Sneed* v. *Tippett*, 114 Okla. 173, 245 p. 40, holding the statute valid as to new domestic corporations. Constitutional objections raised in these cases have apparently been eliminated in the sections compiled in the 1931 statutes under Article I.

Sec. 11508. Foreign gas pipe line corporations licensed.

Omitted.

Sec. 11509. Domestic companies may purchase from interstate lines—License from corporation commission.

Omitted.

Sec. 11510. Pipe-line companies must comply with this article.

Omitted.

NOTE.—Mandamus to compel filing of acceptance under this section was sought in *Oklahoma Natural Gas Co.* v. *State*, 47 Okla. 601, 150 Pac. 475 (1915), and refused on the ground that the Corporation Commission's remedy was a suit for a receivership and that, as the defendant had an election under the act to file an acceptance or go out of business, mandamus did not lie to compel an acceptance, even assuming the constitutionality of the act.

Sec. 11511. Right of way over highways must be granted by charter and damages paid adjacent owners.

Omitted.

Sec. 11512. Chief mine inspector to supervise installation.

Omitted.

Sec. 11513. Lines over private property.

Omitted.

Sec. 11514. Corporations become domestic.

Omitted.

Sec. 11515. Information to be furnished commission.

Before any gas pipe line corporation shall acquire any rights of way, or exercise the right of eminent domain within this State, or construct any pipe lines for the transportation of gas, it shall file in the office of the corporation commission a plat showing in detail the points in this State, between which and the route along which its trunk line is proposed to be constructed, the intended size and capacity thereof, and the location and capacity of all pumping stations, gate valves, check valves, and connections of all kinds on said trunk lines; and upon the demand of the corporation commission it shall file a plat showing in detail all the lines owned or operated by it, with full information as to their capacity and size, location, and capacity of its pumping station, gate valves, check valves, and connections of all kinds in existence.

Sec. 11516. Domestic pipe-line companies may erect pumping stations.

Omitted.

Sec. 11517. Domestic pipe-line companies may cross highways gas to be furnished owners.

Omitted.

ARTICLE 2: GAS—PRODUCTION, TRANSPORTATION AND PREVENTION OF WASTE

Sec. 11518. Businesses and persons subject to the act—Vested rights excepted.

Every corporation, joint-stock company, limited copartnership, partnership, or other person now or hereafter exercising or claiming the right to carry or transport natural gas by or through pipe line or lines, for hire, compensation, or otherwise, or now or hereafter exercising or claiming the right to engage in the business of producing, piping, or transporting natural gas, or any other person or persons, now or hereafter engaging in the business of buying, selling

in, or transporting natural gas within the limits of this State shall not have or possess the right to conduct or engage in said business or operations, in whole or in part, as above described, or have or possess the right to locate, maintain, or operate the necessary pipe lines, fixtures, and equipment thereto belonging, or use in connection therewith, concerning the said business of carrying or transporting natural gas as aforesaid, on, over, along, across, through, in, or under any present or future highway, or part thereof, within the State, or to have or possess the right of eminent domain, or any other right or rights, concerning said business or operation, in whole or in part, except as authorized by and subject to the provisions of this act, except, further, and only such right or rights as may already exist which are valid, vested, and incapable of revocation by any law of this State or of the United States.

Sec. 11519. Pipe-line right of way—Eminent domain—Highways.

Omitted.

Sec. 11520. Pipe-line operators common purchasers—Requirements—Exemptions.

Every corporation, joint-stock company, limited copartnership, partnership, or other person, now or hereafter claiming or exercising the right to carry or transport natural gas by pipe line or pipe lines, for hire, compensation, or otherwise, within the limits of this State, is allowed by, and upon compliance with the requirements of this act, as owner, lessee, licensee, or by virtue of any other right or claim, which is now engaged or hereafter shall engage in the business of purchasing natural gas shall be a common purchaser thereof, and shall purchase all the natural gas in the vicinity of, or which may be reasonably reached by its pipe lines or gathering branches, without discrimination in favor of one producer or one person as against another, and shall fully perform all the duties of a common purchaser; but if it shall be unable to perform the same, or be legally excused from purchasing and transporting all the natural gas produced or offered, then it shall purchase and transport natural gas from each person or producer ratably, in proportion to the average production, and such common purchasers are hereby expressly prohibited from discriminating in price or amount for like grades of natural gas or facilities as between producers or persons; and in the event it is likewise a producer, it is hereby prohibited from discrimination in favor of its own production, or production in which it may be interested directly or indirectly in whole or in part, and its own production shall be treated as that of

any other person or producer. All persons, firms, associations, and corporations are exempted from the provisions of this act, except from the provisions of section 9 hereof, where the nature and extent of their business is such that the public needs no use in the same, and the conduct of the same is not a matter of public consequence, and for this purpose the district courts of the State and the corporation commission are hereby vested with jurisdiction to determine such exemptions in any action or proceeding properly before them, and provided by the laws now in force in this State regulating the purchase and transportation of oil.

NOTE.—*Held*, That the common purchaser statute had no application to production from an exhausted field: *Nowata County Gas Co.* v. *Henry Oil Co.*, 269 F. 742 (C. C. A., 8th Civ., 1920).

This section's requirements for ratable taking were cited but not construed in *Quinton Relief Oil & Gas Co.* v. *Corporation Commission*, 101 Okla. 164, 224 Pac. 156 (1924).

Sec. 11521. Pipe line companies declared carriers—Discrimination—Exemptions as to city distribution lines.

Every corporation, joint-stock company, limited copartnership, partnership, or other person, now or hereafter engaged in the business of carrying or transporting natural gas for hire, for compensation, or otherwise, by pipe line or pipe lines within this State, and by virtue of and in conformity to any valid law incapable of revocation by any law of this State or of the United States, or by virtue of and in conformity of the provisions of this act, shall be a common carrier thereof as at common law, and no such common carriers shall allow or be guilty of any unjust or any unlawful discrimination, directly or indirectly, in favor of the carriage, transportation, or delivery of any natural gas offered to it, in its possession or control, or in which it may be interested, directly or indirectly, and, provided further, that any person, firm, or corporation owning or operating a gas pipe line within the limits of any incorporated city or town in this State shall be exempted from the provisions of this section only as to its distributing lines located wholly within the corporate limits of said city or town.

Sec. 11522. Carriers may not own wells or leases.

It shall be unlawful for any corporation, joint-stock company, limited copartnership, partnership, or other person, now or hereafter engaged in the business of carrying or transporting natural gas for hire or compensation or otherwise within the limits of this act and not becoming a common purchaser as defined by, and accepting the provisions of this act, to own or operate, directly or indirectly, any gas well or wells, gas leases, or gas holdings or interests in this

State, after six months next after the approval of this act, and each and every of said corporations, joint-stock company, limited copartnership, partnership, or other persons shall divest themselves of all legal or equitable ownership, interest, or control, directly or indirectly, in gas well or wells, gas leases, or gas holdings or interest in this State.

Sec. 11523. Acceptance of act to be filed with commission.

Before any corporation, joint-stock company, limited copartnership, partnership, or other persons shall have, possess, enjoy, or exercise the right of eminent domain, right of way, right to locate, maintain, or operate pipe lines, fixtures, or equipment thereunto belonging, or used in connection therewith, as authorized by the provisions of this act, or shall have, possess, enjoy, or exercise any right (the word "right" in this connection being used in its most comprehensive legal sense) conferred by this act, every such corporation, joint-stock company, limited copartnership, partnership, or other person shall file in the office of said corporation commission proper and explicit authorized acceptance of the provisions of this act and the constitution of this State, in cases of pipe lines a plat showing in detail the points within this State, between which, and the route along which, the trunk lines are proposed to be constructed. the intended size and capacity thereof, and the location and capacity of all pumping stations, gate valves, check valves, and connections and appliances of all kinds used, or to be used, on said trunk line or lines; and upon demand of the corporation commission the proper party or parties, as required by said commission, shall properly file a plat showing in detail all the lines owned and operated by them, respectively, with full and explicit information as to their capacity, size, and location, and the capacity of their pumping stations, gate valves, check valves, and connections of all kinds, respectively, required or used in the operation thereof.

Sec. 11524. Right of way—Highways—Eminent domain—Foreign corporations.

Omitted.

Sec. 11525. Filing records with the corporation commission—Extension of time.

Omitted.

Sec. 11526. Only 25 per cent of capacity of gas wells to be taken.

Every corporation, joint-stock company, limited copartnership, partnership, or other person now or hereafter claiming or exercising

the right to produce natural gas, or to carry or to transport natural gas through pipe line or pipe lines, for hire, compensation, or otherwise though the limits of this State, is allowed by and upon compliance with the requirements of this act as owner, lessee, licensee, or by virtue of any other right or claim, is hereby prohibited from taking more than 25 per cent of the daily natural flow of any gas well or wells unless for good cause shown, under the exigencies of the particular case the corporation commission shall establish a different per centum under the prescribed rules and regulations therefor.

NOTE.—*Held*, That while the restriction of 25 per cent was valid, the field in question was so exhausted that the limitation had no application: *Nowata County Gas Co.* v. *Henry Oil Co.*, 269 F. 742 (C. C. A., 8th Civ., 1920).

Sec. 11527. Meters—Requirements.

Omitted.

Sec. 11528. Violation of act—Punishment.

Any person, copartnership, or corporation, its agent or employees, violating any of the provisions of this act, or any order of a court of competent jurisdiction of this State, or the corporation commission, pursuant to the jurisdiction conferred by this act, shall, upon conviction thereof, be fined a sum of not less than $1,000 nor more than $5,000, or imprisonment not less than six months nor more than one year, or by both such fine and imprisonment for each and every violation of this act; but in case the monthly runs or takings or transportation of gas shall average so as to be without discrimination, as herein provided, a transaction or transactions of any particular day or week or portion of a month shall be disregarded; and the court of competent jurisdiction of the county in which the omission or commission, which is in violation of this act, has occurred, shall have jurisdiction of an action under the Penal Code for the punishment thereof; and that said penalties shall not be exclusive of civil liability.

Sec. 11529. Violations—Receivership—Procedure.

The corporation commission shall, upon being reasonably satisfied that any corporation has violated the provisions of this act, recommend to the attorney general that a receiver be appointed for such corporation. Upon receipt of the recommendation by the attorney general, he shall within 10 days file a petition on behalf of the State in any court of competent jurisdiction, praying that a receiver be appointed, and such court shall immediately consider the application and appoint a receiver, if in the judgment of the court the provisions of this act have been willfully violated. The receiver, when

appointed, shall immediately take charge of all the business, property, and assets of such corporation in the State and shall retain possession thereof until it shall be determined upon the trial whether or not such corporation has violated the provisions of this act, then, in addition to the other penalties herein provided, all the property of said corporation shall be retained under such receivership until the penalties incurred hereunder are paid, after which the receivership may be discharged upon such terms and conditions as the court may impose as an assurance for the further compliance with this act.

Sec. 11530. Evidence—Reports of gas companies.

Omitted.

Sec. 11531. Enforcement by corporation commission—Appeals.

The corporation commission is hereby authorized and empowered to enforce all the provisions of this act, including the employment of requisite help and gas experts to carry out the same, except where jurisdiction is conferred on some other branch of the State government by the constitution of this State; appeals may be allowed from the decision of the commission to the supreme court as now provided by law for appeals in other cases.

NOTE.—*Oklahoma Natural Gas Co.* v. *Oklahoma*, 258 U. S. 234, 42 Sup. Ct. 287, 66 L. Ed. 590 (1922), sustained an order of the Oklahoma Corporation Commission ordering rebates on gas bills to consumers because of deficiencies of quality and pressure of the natural gas supply, but this act was not cited.

Sec. 11532. Extension of time for operation of act.

Omitted.

Sec. 11533. Waste prohibited.

That the production of natural gas in the State of Oklahoma in such manner and under such conditions as to constitute waste shall be unlawful.

Sec. 11534. Waste defined.

That the term "waste," as used herein in addition to its ordinary meaning, shall include escape of natural gas in commercial quantities into the open air, the intentional drowning with water of a gas stratum capable of producing gas in commercial quantities, underground waste, the permitting of any natural-gas well to wastefully burn, and the wasteful utilization of such gas.

Prohibition by the Corporation Commission of the manufacture of carbon black was held authorized by this section's definition of wasteful utilization, in *Quinton Relief Oil & Gas Co.* v. *Corporation Commission*, 101 Okla. 164, 224 Pac. 156 (1924).

Sec. 11535. Conservation of gas.

That whenever natural gas in commercial quantities or a gas-bearing stratum known to contain natural gas in such quantity, is encountered in any well drilled for oil or gas in this State, such gas shall be confined to its original stratum until such time as the same can be produced and utilized without waste, and all such strata shall be adequately protected from infiltrating waters. Any unrestricted flow of natural gas in excess of 2,000,000 cubic feet per 24 hours shall be considered a commercial quantity thereof: *Provided*, That, if in the opinion of the corporation commission gas of a lesser quantity shall be of commercial value said commission shall have authority to require the conservation of said gas in accordance with the provisions of this act: *And provided further*, That the gauge of the capacity of any gas well shall not be taken until such well has been allowed an open flow for the period of three days.

Sec. 11536. Excess gas supply apportionment.

That whenever the full production from any common source of supply of natural gas in this State is in excess of the market demands, then any person, firm, or corporation having the right to drill into and produce gas from any such common source of supply may take therefrom only such proportion of the natural gas that may be marketed without waste, as the natural flow of the well or wells owned or controlled by any such person, firm, or corporation bears to the total natural flow of such common source of supply, having due regard to the acreage drained by each well, so as to prevent any such person, firm, or corporation securing any unfair proportion of the gas therefrom: *Provided*, That the corporation commission may by proper order permit the taking of a greater amount whenever it shall deem such taking reasonable or equitable. The said commission is authorized and directed to prescribe rules and regulations for the determination of the natural flow of any such well or wells and to regulate the taking of natural gas from any or all of such common sources of supply within the State, so as to prevent waste, protect the interests of the public, and of all those having a right to produce therefrom, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another.

Sec. 11537. Common purchase—Fair treatment.

That every person, firm, or corporation now or hereafter engaged in the business of purchasing and selling natural gas in this State shall be a common purchaser thereof, and shall purchase all of the natural gas which may be offered for sale, and which may reasonably be reached by its trunk lines, or gathering lines, without discrimination in favor of one producer as against another or in favor of any one source of supply as against another save as authorized by the corporation commission after due notice and hearing; but if any such person, firm, or corporation shall be unable to purchase all the gas so offered, then it shall purchase natural gas from each producer ratably. It shall be unlawful for any such common purchaser to discriminate between like grades and pressure of natural gas, or in favor of its own production, or of production in which it may be directly or indirectly interested, either in whole or in part, but for the purpose of prorating the natural gas to be marketed, such production shall be treated in like manner as that of any other producer or person, and shall be taken only in the ratable proportion that such production bears to the total production available for marketing. The corporation commission shall have authority to make regulations for the delivery, metering, and equitable purchasing and taking of all such gas and shall have authority to relieve any such common purchaser, after due notice and hearing, from the duty of purchasing gas of an inferior quality or grade.

Sec. 11538. Hearing before corporation commission—How conducted.

That any person, firm, or corporation, or the attorney general, on behalf of the State may institute proceedings before the corporation commission, or apply for a hearing before said commission, upon any question relating to the enforcement of this act; and jurisdiction is hereby conferred upon said commission to hear and determine the same, said commission shall set a time and place when such hearing shall be had and give reasonable notice thereof to all persons or classes interested therein by publication in some newspaper or newspapers having general circulation in the State, and shall in addition thereto cause notice to be served in writing upon any person, firm, or corporation, complained against in the manner now provided by law for serving summons in civil actions. In the exercise and enforcement of such jurisdiction said commission is authorized to summon witnesses, make ancillary orders, and use such mesne and final process including inspection and punishment as for contempt, analogous to proceedings under its control over public service corporations as now provided by law.

Sec. 11539. Appeals to supreme court.

That appellate jurisdiction is hereby conferred upon the supreme court of this State to review the orders of said commission made under this act. Such appeal may be taken by any person, firm, or corporation shown by the record to be interested therein, in the same

manner and time as appeals are allowed by law from other orders of the corporation commission. Said orders so appealed from may be superseded by the commission or by the supreme court upon such terms and conditions as may be just and equitable.

Sec. 11540. Power of corporation commission—Rules and regulations.

That the corporation commission shall have authority to make regulations for the prevention of waste of natural gas and for the protection of all natural-gas, fresh-water, and oil-bearing strata encountered in any well drilled for oil or natural gas, and to make such other rules and regulations and to employ or appoint such agents, with the consent of the governor, as may be necessary to enforce this act.

Sec. 11541. Acceptance by pipe lines.

Before any person, firm, or corporation shall have, possess, enjoy, or exercise the right of eminent domain, right of way, right to locate, maintain, construct, or operate pipe lines, fixtures, or equipments belonging thereto or used in connection therewith, for the carrying or transportation of natural gas, whether for hire or otherwise, or shall have the right to engage in the business of purchasing, piping, or transporting natural gas, as a public service, or otherwise, such person, firm, or corporation shall file in the office of the corporation commission a proper and explicit authorized acceptance of the provisions of this act.

Sec. 11542. Duties of mine inspector unchanged.

That nothing contained in this act shall be construed to interfere with any duties now imposed by law upon the chief mine inspector of the State or his deputies.

Sec. 11543. Validity of several sections of act independent.

That the invalidity of any section, subdivision, clause, or sentence of this act shall not in any manner affect the validity of the remaining portion thereof.

Sec. 11544. Penalties for violation.

That in addition to any penalty that may be imposed by the corporation commission for contempt, any person, firm, or corporation, or any officer, agent, or employee thereof, directly or indirectly violating the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof in a court of competent jurisdiction shall be punished by a fine in any sum not to exceed $5,000 or by imprisonment in the county jail not to exceed 30 days, or by both such fine and imprisonment.

Sec. 11545. Ownership defined.

All natural gas under the surface of any land in this State is hereby declared to be and is the property of the owners, or gas lessees, of the surface under which gas is located in its original state.

Sec. 11546. Rights of owners—Restrictions on output.

Any owner, or oil and gas lessee, of the surface, having the right to drill for gas shall have the right to sink a well to the natural gas underneath the same and to take gas therefrom until the gas under such surface is exhausted. In case other parties, having the right to drill into the common reservoir of gas, drill a well or wells into the same, then the amount of gas each owner may take therefrom shall be proportionate to the natural flow of his well or wells to the natural flow of the well or wells of such other owners of the same common source of supply of gas, such natural flow to be determined by any standard measurement at the beginning of each calendar month: *Provided*, That not more than 25 per cent of the natural flow of any well shall be taken, unless for good cause shown, and upon notice and hearing the corporation commission may by proper order permit the taking of a greater amount. The drilling of a gas well or wells by any owner or lessee of the surface shall be regarded as reducing to possession his share of such gas as is shown by his well.

Sec. 11547. Purchasers of output—Price and amounts of gas to be taken.

Any person, firm, or corporation taking gas from a gas field, except for purposes of developing a gas or oil field, and operating oil wells, and for the purpose of his own domestic use, shall take ratably from each owner of the gas in proportion to his interest in said gas, upon such terms as may be agreed upon between said owners and the party taking such, or in case they can not agree at such a price and upon such terms as may be fixed by the corporation commission after notice and hearing: *Provided*, That each owner shall be required to deliver his gas to a common point of delivery on or adjacent to the surface overlying such gas.

Sec. 11548. Taking more than share of gas—Damages and penalties.

Any person, firm, or corporation taking more than his or its proportionate share of such gas, in violation of the provisions of

this act, shall be liable to any adjoining well owner for all damages sustained thereby and subject to a penalty for each violation not to exceed $500, and each day such violation is continued shall be a separate offense.

Sec. 11549. Violations of act—Punishment.

Any person or agent of a corporation who takes gas, or aids or abets in the taking of gas, except as herein provided, either directly or indirectly, as an individual, officer, agent, or employee of any corporation, shall be guilty of grand larceny, and, upon conviction thereof, shall be sentenced to the penitentiary not to exceed five years.

ARTICLE 3: OIL PIPE LINES

Sec. 11550. Oil companies must comply with this article—Penalty.

Every corporation, joint-stock company, partnership, or other person, exercising or claiming the right to carry or transport crude oil or petroleum, or any of the products thereof, by or through pipe lines, for hire or otherwise, or exercising or claiming the right to engage in the business of producing crude oil or petroleum, or of refining it, or manufacturing any of the products thereof, or of storing crude oil or petroleum produced by it, or any other person, or engaging in the business of buying, selling, or dealing in crude oil or petroleum, within the limits of this State, shall not have or possess the right to conduct or engage in said business or operation, in whole or in part, as above described, or have or possess the right to locate, maintain, or operate the necessary pipe lines, fixtures, and equipment thereunto belonging, or used in connection therewith, concerning the said business of carrying or transporting crude oil or petroleum as aforesaid, on, over, along, across, through, in, or under any present or future highway, or part thereof, within this State, or have or possess the right of eminent domain or any other right or rights, concerning said business or operations, in whole or in part, except as authorized by and subject to the provisions of this article, and except such rights as may already exist which are valid, vested, and incapable of revocation by any law of this State or of the United States. The word "petroleum" as used herein means all crude oil and its manufactured products, not including natural gas.

Sec. 11551. Right of way.

Omitted.

Sec. 11552. Foreign corporations.

Omitted.

Sec. 11553. Common purchasers of oil—Discrimination prohibited.

Every corporation, joint-stock company, partnership, or other person claiming or exercising the right to carry or transport crude oil or petroleum or any of the products thereof, by pipe line for hire or otherwise, within the limits of this State, as allowed by and upon compliance with the requirements of this article, as owner, lessee, licensee, or by virtue of any other right or claim, which is engaged in the business of purchasing crude oil or petroleum therein, shall be deemed a common purchaser thereof, and shall purchase all of the petroleum in the vicinity of, or which may be reasonably reached by its pipe lines, or gathering branches, without discrimination in favor of one producer or one person as against another, and shall fully perform all the duties of a common purchaser; but if it shall be unable to perform the same, or shall be legally excusable from purchasing and transporting all of the petroleum produced, then it shall purchase and transport petroleum from each person and producer ratably in proportion to the average daily production, and such common purchasers are hereby expressly prohibited from discriminating in price or amount for like grades of oil, or facilities as between producers or persons; and in the event such purchaser is likewise a producer, it is hereby prohibited from discriminating in favor of its own production, or storage, or production or storage in which it may be interested, directly or indirectly, in whole or in part, and its own production and storage shall be treated as that of any other person or producer.

Sec. 11554. Provisions inapplicable where public needs not involved.

All persons, firms, associations, and corporations are exempt from the provisions of this article where the nature and extent of their business are such that the public needs no use in the same and the conduct of the same is not a matter of public consequence; and for this purpose the district courts of the State and the corporation commission are vested with jurisdiction to determine such exemptions in any action or proceeding properly before them, as provided in this article.

Sec. 11555. Oil carriers are common carriers—Discrimination prohibited.

Every corporation, joint-stock company, partnership, or person engaged in the business of carrying or transporting crude oil or petroleum or any of the products thereof for hire or otherwise, by

pipe lines within this State, and by virtue of and in conformity to any valid law incapable of revocation by any law of this State or of the United States, or by virtue of and in conformity to the provisions of this article, shall be deemed a common carrier thereof as at common law; and no such common carrier shall allow or be guilty of any unjust or unlawful discrimination, directly or indirectly, in favor of the carriage, transportation, storage, or delivery of any crude, stock, or storage oil, or any product thereof in its possession or control, or in which it may be interested, directly or indirectly.

Sec. 11556. Oil carriers not to be interested in producing.

It shall be unlawful for any corporation, joint-stock company, partnership, or person engaged in the business of carrying or transporting crude oil or petroleum, or any of the products thereof, for hire or otherwise, within the limits of this article, and not becoming a common purchaser as defined by, and accepting the provisions of this article, to own or operate, directly or indirectly, any oil well, oil leases, or oil holdings or interests in this State, and each of said corporations, joint-stock companies, partnerships, or persons shall divest themselves of all legal or equitable ownership, interest, or control, directly or indirectly, in oil wells, oil leases, or oil holdings or interests in this State.

Sec. 11557. Acceptance of laws and plats to be filed.

Before any corporation, joint-stock company, partnership, or person shall have, possess, enjoy, or exercise the right of eminent domain, right of way, right to locate, maintain, or operate pipe lines, fixtures, or equipment thereunto belonging, or used in connection therewith, as authorized by the provisions of this article, or shall have, possess, enjoy, or exercise any right (the word "right" in this connection being used in its most comprehensive legal sense) conferred by this article, every such corporation, joint-stock company, partnership, or other person shall file in the office of the corporation commission a proper and explicit authorized acceptance of the provisions of this article and the constitution of this State, and, in cases of pipe lines, a plat showing in detail the points within this State between which, and the route along which, the trunk lines are proposed to be constructed, the intended size and capacity thereof, and the location and capacity of all pumping stations, gate valves, check valves, and connections and appliances of all kinds used, or to be used, on said trunk lines; and upon demand of the corporation commission, the proper party or parties, as required by said commission, shall promptly file a plat showing in detail all the lines owned and operated by them, respectively, with full and explicit information as to their capacity, size, and location, and the capacity of their pumping stations, gate valves, check valves, and connections of all kinds required or used in the operation thereof.

Sec. 11558. Domestic pipe-line companies have right of way on highways.

Omitted.

Sec. 11559. Right of eminent domain granted.

All persons, natural or artificial, except foreign corporations, shall have the right of eminent domain, and any right or privilege hereby conferred, when necessary to make effective the purposes of this article and the rights thereby conferred. Foreign corporations organized under the laws of any other State, or the United States, and doing or proposing to do business in this State, and which shall have become a body corporate pursuant to or in accordance with the laws of this State, and which, as hereby provided, shall have registered its acceptance of the terms hereof, shall receive all the benefits provided by this article.

Sec. 11560. Commission may extend time for filing plats.

Omitted.

Sec. 11561. Penalty for violations.

Any person, copartnership, or corporation, its agent or employee, violating any of the provisions of this article, or any order of the competent courts of this State or the corporation commission, pursuant to the jurisdiction conferred by this article, shall, upon conviction thereof, be fined a sum of not less than $1,000 nor more than $5,000, or imprisonment for not less than six months nor more than one year, or by both such fine and imprisonment for each and every violation of this article; but in case the monthly runs or takings or transportation of oil shall average so as to be without discrimination, as herein provided, the transaction or transactions of any particular day, week, or portion of a month shall be disregarded; and the competent court of the county in which the omission or commission which is a violation of this article has occurred shall have jurisdiction of an action under the Penal Code for the punishment thereof; and said penalties shall not be exclusive of civil liability.

Sec. 11562. Suspension of penalty pending litigation.

Whenever the operation of a valid order of a competent court or the corporation commission is duly suspended, according to law,

the punitive provisions of this article shall likewise be suspended in their operation as to the transactions adjudicated in said court; and further, any court having jurisdiction of an action brought by the State to punish for a violation under the terms of this article, shall not impose a punishment therefor greater than $500 against any person or corporation, if it finds from the evidence that the violation was made solely with the object of testing according to law the validity of any of the provisions of this article, or of the order of any competent court or of the corporation commission, in any proceeding to carry out the provisions hereof.

Sec. 11563. Certified transcript shall be evidence.

A properly certified transcript of the report of any such corporation, association, or person shall, as against the maker thereof, be prima facie evidence of the truth of any matter therein contained.

Sec. 11564. Commission may extend time for operation of law.

Omitted.

ARTICLE 4: OIL—WASTE PROHIBITED

Sec. 11565. Waste prohibited.

That the production of crude oil or petroleum in the State of Oklahoma in such manner and under such conditions as to constitute waste is hereby prohibited.

The definition of waste as including production in excess of transportation and marketing facilities was sustained, against objections of indefiniteness and of unconstitutionality, in *C. C. Julian Oil & Royalties Co.* v. *Capshaw*, 145 Okla. 237, 292 Pac. 841 (1930).

This section was attacked as indefinite and uncertain in *Champlin Refining Company* v. *Corporation Commission*, 286 U. S. 210, 52 Sup. Ct. 559, 76 L. Ed. 725 (1932), affg. 51 Fed. (2d) 823, but the Corporation Commission's proration orders were sustained.

Held, that section 11565 to section 11574, inclusive, apply only to production and not to sale or transportation of crude oil and its products. *H. F. Wilcox Oil & Gas Co.* v. *State of Oklahoma, Paul Walker, et al.*, —— Okla. ——, —— Pac. (2d) —— (Sup. St. of Okla., Dec. 13, 1932).

Sec. 11566. Production and sale regulated—Corporation commission.

That the taking of crude oil or petroleum from any oil-bearing sand or sands in the State of Oklahoma at a time when there is not a market demand therefor at the well at a price equivalent to the actual value of such crude oil or petroleum is hereby prohibited,

and the actual value of such crude oil or petroleum at any time shall be the average value as near as may be ascertained in the United States at retail of the by-products of such crude oil or petroleum when refined less the cost and a reasonable profit in the business of transporting, refining, and marketing the same, and the corporation commission of this State is hereby vested with the authority and power to investigate and determine from time to time the actual value of such crude oil or petroleum by the standard herein provided, and when so determined said commission shall promulgate its findings by its orders duly made and recorded and publish the same in some newspaper of general circulation in the State.

NOTE.—Construction of this section was specifically excluded from the decision in *C. C. Julian Oil & Royalties Co.* v. *Capshaw*, 145 Okla. 237, 292 Pac. 841 (1930), but the court said, "It is not to be assumed that if the Corporation Commission were atempting to fix the market value of oil under that section we would sustain same."

The Corporation Commission has never entered an order under this section, and the issue has not been adjudicated. *Champlin Refining Company* v. *Corporation Commission*, 286 U. S. 210, 52 Sup. Ct. 559, 76 L. Ed. 725 (1932), affg. 51 Fed. (2d) 823.

Sec. 11567. Waste defined—Protection.

That the term "waste" as used herein, in addition to its ordinary meaning, shall include economic waste, underground waste, surface waste, and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands. The corporation commission shall have authority to make rules and regulations for the prevention of such wastes and for the protection of all fresh-water strata and oil and gas-bearing strata encountered in any well drilled for oil.

NOTE.—The definition of waste to include production in excess of transportation and marketing facilities was sustained against objections of indefiniteness and unconstitutionality in *C. C. Julian Oil & Royalties Co.* v. *Capshaw*, 145 Okla. 237, 292 Pac. 841 (1930).

This section was attacked as indefinite and uncertain in *Champlin Refining Company* v. *Corporation Commission*, 286 U. S. 210, 52 Sup. Ct. 559, 76 L. Ed. 725 (1932), affg. 51 Fed. (2d) 823, but the Corporation Commission's proration orders issued under this act were sustained.

Held, that in making regulations under this section the commission is acting in a legislative capacity, and its regulations must be general and not special, and may be made without evidence or without regard to the evidence heard; but that when the commission attempts to apply these rules in order to prevent waste or to regulate production, it acts in a quasi judicial capacity and must proceed in accordance with the rules of procedure and evidence provided by the legislature or by itself, and can not act on incompetent, irrelevant or immaterial evidence. *H. F. Wilcox Oil & Gas Co.* v. *State of Oklahoma, Paul Walker, et al.*, —— Okla. ——, —— Pac. (2d) —— (Sup. Ct. of Okla., Dec. 13, 1932).

Sec. 11568. Production regulated—Discrimination of purchaser prohibited.

That whenever the full production from any common source of supply of crude oil or petroleum in this State can only be obtained under conditions constituting waste as herein defined, then any person, firm, or corporation, having the right to drill into and produce oil from any such common source of supply, may take therefrom only such proportion of all crude oil and petroleum that may be produced therefrom, without waste, as the production of the well or wells of any such person, firm, or corporation bears to the total production of such common source of supply. The corporation commission is authorized to so regulate the taking of crude oil or petroleum from any or all such common sources of supply, within the State of Oklahoma as to prevent the inequitable or unfair taking from a common source of supply of such crude oil or petroleum by any person, firm, or corporation, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another.

NOTE 1.—Proration orders issued under this section were sustained in *C. C. Julian Oil & Royalties Co.* v. *Capshaw*, 145 Okla. 237, 292 Pac. 841 (1930).

NOTE 2.—The Corporation Commission's orders enforcing proration under this section were sustained in *Champlin Refining Company* v. *Corporation Commission*, 286 U. S. 210, 52 Sup. Ct. 559, 564, 76 L. Ed. 725 (1932), affg. 51 Fed. (2d) 823.

Page 564: "It is not shown that the rule for proration prescribed in section 4 or any other provision here involved amounts to or authorizes arbitrary interference with private business or plaintiff's property rights, or that such statutory rule is not reasonably calculated to prevent the wastes specified in section 3." (52 Sup. Ct.)

NOTE 3.—*Russell* v. *Corporation Commission*, 15 P. (2d) 115 (S. Ct. Okla. No. 24059, Oct. 11, 1932), denied a writ of prohibition to prevent the corporation commission's hearing a complaint against violation of proration orders issued under this and the preceding section. It was held that the statute was not in violation of the provisions of the State constitution relating to the separation of judicial, legislative, and executive powers and that the legislature was authorized by section 35 of article 9 of the constitution to effect amendments conferring quasi judicial authority on the corporation commission. The statute was held within the authority of the State to enact for the protection of common rights in reservoir energy and in oil and gas, and on the ground of the State's interest in protection of its natural resources.

NOTE 4.—*Held*, that the commission may regulate the taking of crude oil from a common source of supply so as to prevent inequitable or unfair taking only when the full production of oil from that source can not be obtained without waste; that such regulation must be under regulations adopted by the commission pursuant to section 11567; that the regulation of taking under this statute must be on a per-well basis without regard to the number of wells being operated by any producer from a common source; that the commission is without authority to order a well shut in because another well of the same operator has produced more than its allowable; that the commission's authority is limited to taking from a common source of supply, and must be exercised without regard to the taking from another common source (e. g., a separate stratum in the same field), except that no unreasonable discrimination may be permitted between two sources; and that the commission is not authorized by law to prorate the total market demand from four separate sources (e. g., four separate strata in the same field), its authority being limited to the pro ration of the market demand from the wells producing from a common source.

Sec. 11569. Wells gaged—Appointment of Agents—Approval by Governor.

That for the purpose of determining such production, a gage of each well shall be taken under rules and regulations to be prescribed by the corporation commission, and said commission is authorized and directed to make and promulgate, by proper order, such other rules and regulations, and to employ or appoint such agents, with the consent of the governor, as may be necessary to enforce this act.

NOTE.—This section was attacked as indefinite and uncertain in *Champlin Refining Company* v. *Corporation Commission*, 286 U. S. 210, 52 Sup. Ct. 559, 76 L. Ed. 725 (1932), affg. 51 Fed. (2d) 823, but the Corporation Commission's proration orders issued under this act were sustained.

Sec. 11570. Enforcement of act—Hearings before corporation commission.

That any person, firm, or corporation, or the attorney general on behalf of the State, may institute proceedings before the corporation commission, or apply for a hearing before said commission, upon any question relating to the enforcement of this act, and jurisdiction is hereby conferred upon said commission to hear and determine the same. Said commission shall set a time and place when and where such hearing shall be had and give reasonable notice thereof to all persons or classes interested therein, by publication in some newspaper or newspapers having general circulation in the State, and, in addition thereto, shall cause reasonable notice in writing to be served personally on any person, firm, or corporation complained against. In the exercise and enforcement of such jurisdiction said commission is authorized to determine any question or fact arising hereunder, and to summon witnesses, make ancillary orders, and use mesne and final process, including inspection and punishment as for contempt, analogous to proceedings under its control over public service corporations, as now provided by law.

NOTE.—Objection was made to the character of notice given under this section in *C. C. Julian Oil & Royalties Co.* v. *Capshaw*, 145 Okla. 237, 292 Pac. 841 (1930), but the commission's proceedings were sustained, and a writ of prohibition was refused to a petitioner who had failed to apply to the commission for a modification of its order.

This section was attacked as indefinite and uncertain in *Champlin Refining Company* v. *Corporation Commission*, 286 U. S. 210, 52 Sup. Ct. 559, 76 L. Ed.

725 (1932), affg. 51 Fed. (2d) 823, but the Corporation Commission's proration orders issued under this act were sustained.

Sec. 11571. Appeals to supreme court—Effect on orders.

That appellate jurisdiction is hereby conferred upon the supreme court in this State to review the action of said commission in making any order, or orders, under this act. Such appeal may be taken by any person, firm, or corporation, shown by the record to be interested therein, in the same manner and time as appeals are allowed by law from other orders of the corporation commission. Said orders so appealed from shall not be superseded by the mere fact of such appeal being taken, but shall be and remain in full force and effect until legally suspended or set aside by the supreme court.

NOTE.—A writ of prohibition was refused to a petitioner who had failed to appeal from the Corporation Commission's original order to the Supreme Court under this article in *C. C. Julian Oil & Royalties Co.* v. *Capshaw*, 145 Okla. 237, 292 Pac. 841 (1930).

Sec. 11572. Penalty for violation.

That in addition to any penalty that may be imposed by the corporation commission for contempt, any person, firm, or corporation, or any officer, agent, or employee thereof, directly or indirectly violating the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof in a court of competent jurisdiction shall be punished by a fine in any sum not to exceed $5,000, or by imprisonment in the county jail not to exceed 30 days, or by both fine and imprisonment.

NOTE.—In *Champlin Refining Company* v. *Corporation Commission*, 286 U. S. 210, 52 Sup. Ct. 559, 76 L. Ed. 725 (1932), affg. 51 Fed. (2d) 823, objection was made that sections 11565, 11567, 11568, 11569, and 11570 were too indefinite and uncertain to warrant the imposition of penalties prescribed by this section, but as no proceedings were pending hereunder, the court declined to pass on its validity.

Sec. 11573. State may secure receiver—Extent and manner.

That in addition to any penalty imposed under the preceding section, any person, firm, or corporation violating the provisions of this act shall be subject to have his or its producing property placed in the hands of a receiver by a court of competent jurisdiction, at the suit of the State through the attorney general, or any county attorney, but such receivership shall only extend to the operating of producing wells and the marketing of the production thereof, under the provisions of this act.

NOTE.—This section was declared invalid in *Champlin Refining Company* v. *Corporation Commission*, 286 U. S. 210, 52 Sup. Ct. 559, 76 L. Ed. 725 (1932), affg. 51 Fed. (2d) 823.

52 Sup. Ct. 568: "It is not the penalty itself that is invalid, but the exaction of obedience to a rule or standard that is so vague and indefinite as to be really no rule or standard at all."

52 Sup. Ct. 567: "There is nothing to support defendants' suggestion that the regulatory provisions of the act do not become operative until the commission has defined permissible production. As shown above, section 9 does not cover violations of orders of the commission."

"The language used applies to violations of the act and does not extend to violations of orders of the commission. It is plain and leaves no room for construction."

Sec. 11574. Validity of relative sections of act.

That the invalidity of any section, subdivision, clause, or sentence of this act shall not in any manner affect the validity of the remaining portion thereof.

NOTE.—Cited in *Champlin Co.* v. *Comm.*, supra.

ARTICLE 5: REGULATION AND INSPECTION OF WELLS

Sec. 11575. Gas to be confined until used.

Any person, copartnership, or corporation in possession, either as owner, lessee, agent, or manager of any well producing natural gas in this State, in order to prevent the said gas wasting by escape, shall, immediately after penetrating the gas-bearing rock, in any well hereafter drilled, shut in and confine the gas in said well until and during such time as the gas therein shall be utilized for lights, fuel, or power purposes: *Provided*, That this section shall not apply to any well operated for oil: *Provided, further*, That when in the course of drilling gas production is developed four days' free time shall be allowed in which to determine whether the well shall be shut and saved for a gas well or drilled further for the purpose of producing oil.

NOTE.—Construed in *Quinton Relief Oil & Gas Co.* v. *Corporation Commission*, 101 Okla. 164, 224 Pac. 156 (1924), to require that gas must be utilized for "lights, fuel, or power purposes," and to prohibit carbon-black manufacture.

Sec. 11576. Unnecessary waste from gas pipe line unlawful.

It shall be unlawful for any person, copartnership, or corporation, either as owner, lessee, agent, or manager of any pipe line in this State, through which natural gas flows from wells utilized for the production of gas only, to allow any unnecessary leak or waste to occur from said line.

Sec. 11577. Flambeau lights unlawful.

It shall be unlawful to use natural gas for illuminating purposes in what are known as flambeau lights; but nothing herein shall pro-

hibit the use of "Jumbo" burners or other burners in glass globes consuming no more gas than such "Jumbo" burners, nor the burning of flambeau lights, not to exceed four in number, within or near the derrick of any drilling well.

Sec. 11578. Hours lights may be used at derricks.

The person, firm, company, or corporation consuming said gas, and using burners in open air or in or around derricks, shall turn off said gas not later than 8 o'clock in the morning of each day such lights or burners are used, and shall not turn on or relight the same between the hours of 8 o'clock a. m. and 5 o'clock p. m.

Sec. 11579. Burning gas during day.

No gas shall be used or burned for illuminating purposes between the hours of 8 o'clock a. m. and 5 o'clock p. m. unless the use of the same is regulated by meter.

Sec. 11580. Disposition of waste from wells.

No inflammable product from any oil or gas well shall be permitted to run into any tank, pool, or stream used for watering stock; and all waste of oil and refuse from tanks or wells shall be drained into proper receptacles at a safe distance from the tanks, wells, or buildings, and be immediately burned or transported from the premises, and in no case shall it be permitted to flow over the land. Salt water shall not be allowed to flow over the surface of the land.

NOTE.—*Held*, That violation of this section was negligence *per se*, entitling an owner of stock to recover for their death, occasioned by drinking from polluted water. *Verland Oil & Gas Co.* v. *Walker*, 100 Okla. 258, 229 Pac. 235 (1924).

Sec. 11581. Abandoned wells to be plugged.

All lessees or operators drilling or operating for crude oil or natural gas within the State of Oklahoma shall immediately, in a practical and workmanlike manner, under the supervision of the oil and gas inspector, as hereinafter provided, plug all dry or abandoned oil and gas wells in which oil or gas bearing stratum has been found, in the following manner: Beginning at the bottom of the hole, same shall be solidly filled with crushed rock or sand pumpings, or both, to a point 25 feet above the top level of the oil or gas bearing sand; at that point a wooden plug of seasoned pine, 2 feet in length and not less than one-half inch in diameter less than the inside diameter of the hole at that point, shall be placed; thereafter the hole shall be filled up solidly 25 feet farther with a substance consisting of one-third portion of cement and two-thirds portion of sand properly mixed with water; thereafter, another wooden plug of seasoned

pine, 2 feet in length and not less than one-half inch in diameter less than the inside diameter of the hole at that point, shall be placed; thereafter the hole shall be filled up solidly 25 feet farther with crushed rock and sand pumpings, or both: *Provided*, That all such wells drilled to the Mississippi lime shall be plugged above the Mississippi lime in the same manner as provided for hereinabove as to the plugging of wells in the upper oil and gas-bearing stratum; all abandoned wells shall immediately be closed and marked: *And provided further*, That when such lessee or operator removes the derrick from and around such wells he shall plug such wells in some good and substantial manner, at least 10 feet below the surface and fill such well from that point to the surface with such material as will prevent the well from caving before final abandonment.

Sec. 11582. Plugged-well record kept open to public.

The inspector of oil and gas shall cause to be systematically filed the records of all oil and gas wells and dry holes plugged in accordance with the preceding section, showing the exact location of each of such wells, the name of the owner, the depth of the wells, and the formation encountered in drilling such wells. These records shall be kept in a book in the office of the chief mine inspector of the State, which shall be known as the "Plugged-well record," and shall be accessible to public inspection at such regular hours as the chief mine inspector shall direct, not less than two hours per day.

Sec. 11583. Inspectors—Appointment and Compensation.

The chief mine inspector shall appoint, subject to removal by him, such deputies of at least five years' practical experience in operating and drilling oil and gas wells and who are not directly or indirectly interested in the production of oil or gas as may be necessary to the full performance of the duties required by law. The chief mine inspector or his deputies shall personally supervise the using and operating of natural gas in this State and the proper observance of the laws of the State dealing with the drilling and production of oil and gas or the piping or storage or purchase or use thereof within the State. The chief mine inspector shall designate one of his deputies to be chief deputy inspector of oil and gas, and all duly appointed deputies shall reside at a convenient place for the performance of their duties, and a written notification of their residence shall be kept on file in the office of the chief mine inspector; the chief deputy inspector of oil and gas shall receive a compensation not to exceed two thousand dollars per annum and traveling and maintenance expenses while in the performance of his duties, and all other deputies so duly appointed shall receive as compensation not to exceed five

dollars per day and their actual traveling and maintenance expenses while in the performance of their duties, to be appropriated out of the receipts of the gross revenue taxes levied and collected upon the production of gas and oil and the storage and carriage thereof.

NOTE.—The powers and duties of the chief mine inspector with reference to the production of oil and gas were transferred to the corporation commission by Laws 1917, ch. 207. See *Love* v. *Boyle*, 72 Okla. 300, 180 Pac. 705, and *Russell* v. *Corporation Commission* (Sup. Ct. Okla. Oct. 11, 1932, 15 P. (2d) 114). However, the sections printed here dealing with his authority are retained in the 1931 official compilation.

Sec. 11584. Inspector to supervise plugging.

Whenever it becomes necessary to plug any well as required by law, the lessee or operator thereof shall at once notify, in writing, the inspector of oil and gas at the office of the chief mine inspector, or by personal written notification to the inspector of oil and gas at his residence, whereupon said inspector or his deputy shall repair to said well and supervise the plugging thereof.

Sec. 11585. Operator to furnish inspector record of drilling.

Upon the arrival of said inspector or his deputy at the well to be plugged, the lessee or operator thereof shall furnish the inspector a record of the drilling of said well, verified under oath, showing a true and correct log of the well.

Sec. 11586. Firing oil or gas, or interfering with appliances unlawful.

It is hereby declared to be unlawful for any person maliciously to set fire to any gas or oil escaping from wells, broken or leaking mains, pipes, valves, tanks, or other appliances used by any person or corporation in conveying gas or oil, or to interfere in any manner with the wells, pipes, mains, gate boxes, valves, stopcocks, or other appliances, machinery, or property of any person or corporation engaged in furnishing gas or oil, unless employed by or acting under the authority and direction of any such person or corporation owning or operating said gas or oil lines, or the proper legal authorities.

Sec. 11587. Penalty for violations.

Any person, copartnership, or corporation violating any of the provisions of this article shall, upon conviction thereof, be fined in any sum not less than $25 nor more than $500, in any court having competent jurisdiction in the county in which the act shall have been committed or omitted, or by being imprisoned for not less than 30 days nor more than 90 days, or by both such fine and imprisonment. The amount of said penalty, when collected, shall be paid, one-half into the public-road fund of the county in which said suit shall have been brought and one-half to the informer in said action.

ARTICLE 6: INSPECTION OF PETROLEUM PRODUCTS

SECS. 11588–11619, INCLUSIVE

Omitted; deals with inspection of oils prior to sale.

ARTICLE 7: METERS—MINIMUM CHARGES

SECS. 11620–11623

Omitted.

CORPORATION COMMISSION

VOLUME I, CHAPTER 20

ARTICLE 9: OIL AND GAS DEPARTMENT

Sec. 3669. Oil and gas department established.

The corporation commission is hereby empowered and authorized to create and establish an oil and gas department under the jurisdiction and supervision of the corporation commission and is hereby authorized to appoint, with the approval and consent of the governor, a chief oil and gas conservation agent, who shall have charge of the oil and gas department herein authorized. (Acts, 1917, p. 385.)

Sec. 3670. Exclusive jurisdiction conferred.

All authority and duties now conferred upon the corporation commission or other departments of the State government in reference to the conservation of oil and gas and the drilling and operating oil and gas wells and the construction and regulation of oil and gas pipe lines are hereby conferred exclusively upon the corporation commission. (Ibid.)

Sec. 3671. Rules and regulations—Plugging wells.

The corporation commission is hereby authorized to prescribe rules and regulations for the plugging of all abandoned oil and gas wells. The same shall be plugged under the direction and supervision of the conservation agents of the corporation commission as may be prescribed by the corporation commission. All orders and regulations in reference to plugging wells shall be made after general hearing as now prescribed by law for the promulgation of orders by the corporation commission. (Ibid.)

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Sec. 3672. Oil and gas—Inspection.

Jurisdiction is hereby conferred upon the corporation commission to inspect all oils and liquids the product of petroleum or other bituminous substances or into which the product of petroleum enters, * * * before the same are consumed, used, sold, or offered to be sold or disposed of * * * and the corporation commission is hereby authorized to appoint, with the approval of the governor, oil inspectors, who shall perform the duties now prescribed by chapter 96, Session Laws, 1915, [11588] and to perform such other duties as may be required by general rules and regulations of the corporation commission. (Ibid., 386.)

Sec. 3673. Fees of inspector.

Omitted.

Sec. 3674. Record of abandoned wells and dry holes to be published.

The Corporation Commission of the State of Oklahoma is authorized and directed to compile and have published and printed a complete record of all abandoned oil and gas wells and dry holes that have been plugged under the supervision of the chief mine inspector, as shown by the reports of deputy oil and gas inspectors and the affidavits in regard thereto returned by said inspectors covering the period from June 30th, 1912, down to and including June 30th, 1917, which compilation shall be classified by sections, township and range.

Sec. 3675. Inspectors — Appointment — Qualifications — Duties—Compensation.

The chief mine inspector shall appoint, subject to removal by him, such deputies of practical experience in operating and drilling oil and gas wells, and who are not directly or indirectly interested in the production of oil or gas, as may be necessary to the full and prompt performance of the duties required by law. The chief mine inspector, or his deputies, shall personally supervise the using and operating of natural gas in this State, and the proper observance of the laws of the State dealing with the drilling for and production of oil and gas, or the piping, storage, purchase, and use thereof in this State, and shall promptly report any violation of such laws of the county attorney of the county in which such violation may occur. Said chief mine inspector shall designate one of his deputies to be chief deputy inspector of oil and gas wells, and pipe lines, and all duly appointed deputies shall reside at places convenient for the performance of their duties, and a record of their residence shall be

kept on file in the office of the chief mine inspector, and be open to the inspection of all persons interested. * * *

NOTE.—For details of division of jurisdiction between the Corporation Commission and the Inspector of Mines see *Love* v. *Boyle*, 720 Okla. 300, 180 p. 705 (1919).

SUMMARY OF REGULATIONS

ORDER NO. 1299; REPRINT MARCH, 1930

RULE 1. Waste prohibited.

RULE 2. Waste defined.

RULE 3. Gas to be confined—Strata to be protected.

RULE 4. Commercial quantities defined. (See Comp. Stat. 7922.)

RULE 5. Gas to be taken ratably. (See Comp. Stat. 7923.)

RULE 6. Common purchaser rule. (See Comp. Stat. 7924.)

RULE 7. Common purchaser—Discrimination prohibited. (See Comp. Stat. 7924.)

RULE 8. Gas to be metered.

RULE 9. Commission shall regulate the taking of natural gas.

RULE 10. Eminent domain—Acceptance of law to be filed with commission.

RULE 11. Duties of conservation officers with reference to rule 10. (By amendment of January 5, 1922, Order 1986, identification signs for all wells were required.)

RULE 12. Approved methods of preventing waste to be used.

RULE 13. Notice of intention to drill, deepen, or plug. (By amendment of January 5, 1922, Order No. 1986, $2,500 bond may be required condition on proper abandonment.)

RULE 14. Methods of plugging dry and abandoned wells and provision for supervision thereof.

RULE 15. Log and plugging record to be filed with commission.

RULE 16. Proper anchorage to be laid.

RULE 17. Equipment for conserving natural gas shall be provided before drilling in.

RULE 18. Separate slush pit to be provided for making mud.

RULE 19. Wells not to be permitted to produce oil and gas from different strata.

RULE 20. Productive strata to be sealed off before drilling through.

RULE 21. Mud-laden fluid to be applied: "No gas sand or stratum upon being penetrated shall be drilled or left open more than three days without the application of mud-laden fluid to prevent the escape of gas while further drilling in or through such sand stratum.

RULE 22. Density of mud fluid where well containing water is drilled into oil or gas producing strata prescribed.

RULE 23. Mud-laden fluid to be applied in pulling or redeeming casing.

RULE 24. Mud-laden fluid to be applied in seating casing when required by commission.

RULE 25. Fresh water to be protected.

RULE 26. Gas to be separated from oil: "No gas found in the upper part of a level or sand which can be separated from the oil in the lower part of the same sand or in a lower or different sand shall be allowed or used to flow oil to the surface, and all gas, so far as it is possible to do so, shall be separated from the oil and securely protected."

RULE 27. Separating device to be installed upon order of commission: "Where oil and gas are found in the same stratum and it is impossible to separate the one from the other, the operator shall, upon being so ordered by the corporation commission, install a separating device of approved type, which shall be kept in place and used as long as necessity therefor exists, and after being installed such device shall not be removed nor the use thereof discontinued without the consent of the corporation commission."

RULE 28. Gas wells not to produce from different sands at the same time through the same string of casing: "No gas well shall be permitted to produce gas from different levels, sands, or strata at the same time through the same string of casing (sec. 3, ch. 197, S. L. 1915), and when gas upon being found is not needed for immediate use, the same shall be confined in its original stratum until such time as the same can be produced and utilized without waste (sec. 3, ch. 197, S. L. 1915), and in confining gas to its original place, the mud-laden fluid process shall be used unless the character of the formation involved is sufficiently ascertained and understood to know that the casing and packer method with Bradenhead attachment can be safely applied and competently used, and in the use of the casing, packing, and Bradenhead method, separate strings of casing shall be run to each sand and the application of the latter method in preference to the former shall not be made without notice to and consent of the corporation commission."

RULE 29. Vacuum pumps not to be installed except on application to the commission.

RULE 30. Shooting of wells: Shooting into salt water prohibited; records required to be made to the commission; damaged wells to be abandoned.

RULE 31. Gauges of rock pressure to be taken monthly and reports made to the commission. Similar gauges of volume of gas production required.

RULE 32. Production to be restrained to 25 per cent of potential capacity: "When the gas from any well is being used, the flow or production thereof shall be restrained to 25 per cent of the potential capacity of the same; that is to say, in any day (24 hours) the well shall not be permitted to flow or produce more than one-fourth of the potential capacity thereof, as shown by the last monthly gauge."

RULE 33. Notification of fires and breaks or leaks in lines required.

RULE 34. Reports from pipe-line companies.

RULE 35. Prescribing conditions under which pipe-line companies may connect with oil or gas wells: "Pipe-line companies shall not connect with oil or gas wells until the owners or operators thereof shall furnish a certificate from the corporation commission that the conservation laws of the State have been complied with; provided, this rule shall not prevent the temporary connection with any well or wells, in order to take care of production and prevent waste until opportunity shall have been given the owner or operator of said well to secure certificate showing compliance with the conservation laws of the State."

RULE 36. Conservation laws and rules of the corporation commission to be complied with before connecting wells with pipe lines: "Owners or operators of oil or gas wells shall, before connecting with any oil or gas pipe line, secure from the corporation commission a certificate showing compliance with the oil and gas conservation laws of the State and conservation orders of the corporation commission; provided that this rule shall not prevent temporary connection with pipe lines in order to take care of production until

opportunty shall have been given for securing such certificate; provided, further, that the owners or operators of such wells shall in a known or proven field make application for such certificate in anticipation of production."

RULE 37. Drilling records to be kept at wells.

RULE 38. Conservation agents to have access to the wells and all well records.

RULE 39. Notice to contractors, drillers, and others to observe rules.

RULE 40. Conservation agents to cooperate with oil and gas inspectors of the Department of Interior.

RULE 41. Conservation agents to assist in enforcement of rules.

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STATE OF PENNSYLVANIA

PENNSYLVANIA STATUTES

1924 SUPPLEMENT, PP. 443, 444, TITLE "OIL AND GAS WELLS"

Sec. 16268a–1. Plugging abandoned oil and gas wells; vent pipes in abandoned wells bored through coal.

Upon abandoning or ceasing to operate any well or wells which shall have been drilled or put down on lands within this Commonwealth for the purpose of exploring for or producing oil or gas, the person, firm, or corporation, drilling or owning the wells shall plug said wells in the following manner: First fill up the well with rock sediment to a point 20 feet above the top of the lowest oil or gas bearing strata or formation encountered and drive a round, seasoned, wooden plug, at least 3 feet in length, equal in diameter to the diameter of the well below the casing, and shall, in like manner, keep plugging and filling until all producing sands have been plugged, when a final plug must be anchored approximately 10 feet below the bottom of the largest casing and filled in with such an amount of rock or rock sediment that may be necessary to completely shut off any water-bearing sands or strata; said fill, however, shall in no event be less than 30 feet in depth. All plugs used in said wells shall be well seasoned, round, wooden plugs of the diameter of the well at the point at which said plug shall be located. They shall be at least 3 feet in length, and the lower end thereof tapered for a distance of 18 inches. In abandoning any well which has been drilled through marketable coal, after the inside casing has been drawn, there shall be placed a 2-inch vent pipe extending from a point 30 feet below the coal bed for a distance of 80 feet in height; said pipe to be encased in cement, after which the outside casing may be drawn. (Act of May 17, 1921, Pennsylvania Laws, 1921, p. 912, sec. 1.)

Sec. 16268a–2. Pulling of casings in gas wells; plugs or bridges upon abandonment of such wells.

Whenever the production of any gas well is not sufficient, in the estimation of the owner, to justify leaving the casing or casings in the well, the well may be utilized through tubing placed on a packer, and after cement and sand has been poured on the packer to a depth

of not less than 10 feet the casing or casings may be pulled and the hole outside of the tubing filled with sand, cement, rock, sediment, clay, or other material to a point at least 30 feet above the highest producing sand, so as to completely shut off all water from the various sands, after which the casing may be drawn. Upon the abandonment of such gas well, if a plug or bridge shall be placed in the tubing at a point near the depth at which the packer was set, and cement and sand poured in on said plug or bridge to a depth of not less than 30 feet, it shall be held a compliance with the provisions of this act relating to plugging and abandoning of wells. (Act of May 17, 1921, Pennsylvania Laws 1921, p. 912, sec. 2.)

NOTE.—Under a similar statute (act of June 10, 1881; P. L. 110), a judgment awarding a penalty for failure to properly plug was reversed on procedural grounds. *Bartoe* v. *Guckert*, 158 Pa. 124, 27 Atl. 845 (1893).

Sec. 16268a–3. Oil or gas wells producing from certain strata; keeping open to permit operation by pressure.

NOTE.—Amended by act of April 26, 1929, Laws 1929, p. 821, q. v. infra.

Sec. 16268a–4. Drilling on near-by lands.

The owner or operator of any well productive of oil or gas in paying quantities shall have the right to give written notice to any owner or operator who may be about to drill or may be drilling a well within 1 mile of said productive well, that the well about to be drilled or being drilled will penetrate the same sand or strata as that from which said productive well obtains its production, and said owner of the well being drilled or about to be drilled shall case off all water found therein, in case said water can not be bailed out of the hole while drilling with the use of an extension bailer, after the service of said notice, so as to prevent the entry of said water into the sand or strata from which the oil or gas is obtained in said oil or gas well. No such notice shall be of any effect unless given before the sand to be protected shall have been penetrated by the well about to be drilled or at the time being drilled. (Act of May 17, 1921, Pennsylvania Laws, 1921, p. 912, sec. 4.)

Sec. 16268a–5. Uncapped wells; opening valves—Opening wells to clean, etc.

The willful permitting of any oil or gas well to remain uncapped, or the willful opening of any valve to admit air in a gas pumped territory in which the gas pressure is less than atmospheric pressure, is declared to be a misdemeanor and is hereby prohibited; and in case any well in such territory is opened for the purpose of cleaning, repairing, drawing tubing, drawing rods, abandoning, etc., the same must not remain open continuously for a longer period than 12 hours, unless work in connection with cleaning, etc., is being conducted more than 12 consecutive hours. (Act of May 17, 1921, Pennsylvania Laws, 1921, p. 912, sec. 5.)

NOTE.—An analogous situation was dealt with in the Louisiana case of *Higgins Oil & Fuel Co.* v. *Guaranty Oil Co.*, 145 La. 233, 82 So. 206, 5 A. L. R. 411 (1919), in which a producer from one tract secured an injunction against leaving uncapped a dry hole on an adjoining tract, from which air permeated into the formation and impaired the value of plaintiff's pumping well. No statute was involved.

Sec. 16268a–6. Violations of act—Penalty.

Any person, firm, or corporation, or the agents thereof, who shall violate any of the provisions of this act shall, upon conviction thereof, be sentenced to pay a fine not to exceed $1,000, or undergo an imprisonment not to exceed one year. The fine imposed under this section shall be applied to the use of the school district in which such well may be situated. (Act of May 17, 1921, Pennsylvania Laws, 1921, p. 912, sec. 6.)

Sec. 16268a–7. Rights of adjoining owners.

Whenever any owner or operator shall neglect or refuse to comply with the provisions of this act, the owner of or operator upon any land adjoining or contiguous thereto that upon which such violation may occur may enter, take possession of said abandoned well, and plug or cap it as provided by this act and recover the expense thereof in an action or [of] tort against the owner or operator whose duty it may have been to comply with the provisions of this act. (Act of May 17, 1921, Pennsylvania Laws, 1921, p. 912, sec. 7.)

* * * * * * *

NOTE.—Sustained in *Steelsmith* v. *Aiken*, 14 Pa. Super. Ct. Rep. 226.

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Sec. 16271. Burning of timber on land in which there are oil and gas wells prohibited—Exceptions.

Fallows, stumps, logs, brush, dry grass, fallen timber, or tree tops shall not be burned in any forest lands of this Commonwealth in which there are producing oil wells or gas wells, or rigs erected for drilling such wells, from the 1st day of April in each year to the 20th day of May next ensuing, nor from the 10th day of September in each year to the 10th day of November next ensuing. Except-

ing during the periods aforesaid, fires may be set in such lands upon the following conditions: First, that written permission thereto of the fire warden of the proper township shall first be obtained; second, said fire warden shall be personally present when such fire is started; third, such fire shall not be started during a strong wind, nor without sufficient help to control the same at all times; fourth, such fire shall be watched and guarded by the person by whom it is started until it is extinguished. No fires shall be set or allowed to burn in said lands excepting upon compliance with the conditions aforesaid. (Act of June 12, 1907, Pennsylvania Laws, 1907, p. 527, sec. 1.)

Sec. 16272. Penalty for violation of act—Appeal.

Any person violating any provisions of this section shall be deemed guilty of a misdemeanor, and upon being convicted thereof before any alderman or magistrate shall be fined by the said alderman or magistrate for the first offense in the sum not less than $10 or more than $20, and for the second and every subsequent offense in a sum not less than $20, nor exceeding $100, to be paid to the county wherein such offense may be committed; and if said fine or penalty and the costs of the proceedings be not paid, then said alderman or magistrate shall commit said offender to the county jail, there to remain until discharged by due course of law: *Provided*, That when the fine imposed exceeds the sum of $20 the party complained against may appeal from the decision of said alderman or magistrate to the court of quarter sessions, upon his entering bail in the nature of a recognizance, in the usual manner, for his appearance at said court, where the offense shall be prosecuted in the same manner as is now directed by law in other cases of misdemeanor. (Act of June 12, 1907, Pennsylvania Laws, 1907, p. 527, sec. 1.)

Sec. 16273. Oil lands to be cleared annually—Penalty for neglect.

Any owner or lessee of any forest lands, or owner of trees growing upon said lands, or any person in charge of the premises upon which lands there are producing oil wells or gas wells, or rigs erected for drilling such wells, shall at least once in each year cause to be removed from said lands all brush, tree tops, and branches of trees which such owner, lessee, or other person in charge of the premises may have cut or felled thereon, within 100 feet, respectively, of all such wells or rigs; and shall at least once in the year cause to be removed from said land all grass, brush, tree tops, and branches of trees, and other inflammable material within 100 feet of the right of way of any railroad company operating thereon; to the end that during the spring and autumn season, as defined

in the first section of this act, the said area shall be free and clear of such inflammable material. In case any person, partnership, or corporation shall neglect to perform the duty imposed by this section, the same shall be liable to a penalty of $50 for failure in any instance to comply with the duty imposed by this section; to be paid to the county where the offense may be committed, recoverable in an action of assumpsit, in which the county wherein such violation occurs shall be the plaintiff. (Act of June 12, 1907, Pennsylvania Laws, 1907, p. 527, sec. 2.)

Sec. 16274. Regulation of railroads passing through oil and gas lands—Penalty for violation of act.

Every railroad company shall, on such part of its road as passes through forest land on which there are producing oil wells or gas wells, or rigs erected for drilling such wells, cut and remove from its right of way through said lands at least once a year all grass, brush, and other inflammable materials, employing in the seasons defined in the first section of this act sufficient trackmen to promptly put out fires on its right of way; provide locomotives thereon with steel netting or iron wire on the smokestacks or other efficient spark arresters to prevent the escape of fire or sparks, and adequate devices to prevent the escape of fire from ash pans and furnaces, and the same shall be used by every engineer and fireman on such part of its road. No railroad company or employee thereof shall deposit fire, coals, or ashes on its track or right of way near such lands. In case of fire on its own or neighboring lands, within 100 feet of its tracks, the railroad company shall use all practicable means to put it out. In case of any violation of the provisions of this section such railroad company shall be answerable to the owner or owners of any property destroyed or injured by fire in consequence of such violation; and said company shall further be liable to a penalty of $100 for such violation, to be paid to the county wherein the violation may occur, recoverable in an action of assumpsit in which the county wherein such violation occurs shall be the plaintiff. (Act of June 12, 1907, Pennsylvania Laws, 1907, p. 527, sec. 3.)

Prior acts repealed.

The following acts of assembly are hereby repealed: The act, approved the 16th day of May, 1878 (Pamphlet Laws, 56), entitled "An act requiring owners and operators of oil lands to plug their wells so as to shut off all fresh water from the oil-bearing rock and to exclude the oil and gas from the fresh water before abandonment, and providing a penalty for neglect to perform the same"; the act

approved the 10th day of June, 1881 (Pamphlet Laws, 110), entitled "An act regulating the mode of plugging abandoned oil wells, and providing a penalty for the violation thereof"; the act, approved the 23d day of June, 1885 (Pamphlet Laws 145), entitled "An act to protect oil, gas, and water wells, tanks, pipes, and machinery connected therewith, and to prevent willful and malicious injury thereto"; and sections 20 and 22 of the act, approved the 29th day of May, 1885 (Pamphlet Laws, 29), entitled "An act to provide for the incorporation and regulation of natural gas companies," and all other acts or parts of acts inconsistent with this act are hereby repealed. (Sec. 8, act May 17, 1921, Public Laws, 1921.)

NOTE.—By joint resolution of April 18, 1919, Pennsylvania Laws, page 87, the attorney general was authorized to institute legal proceedings to protect the interests of citizens of Pennsylvania against infringement by the enforcement of the law of West Virginia restricting the transmission of natural gas from that State into Pennsylvania. (Pennsylvania Statutes, edition of 1920, p. 1574.) See *Pennsylvania* v. *West Virginia*, 262 U. S. 553, 43 S. Ct. 658, 67 L. Ed. 1117.

ACT 352 OF 1929

AN ACT to amend section 3 of the act approved the 17th day of May, 1921 (Pamphlet Laws, 912), entitled "An act to regulate the drilling, operating, and abandoning of oil and gas wells, and providing a penalty for violation of the provisions of this act," as amended.

SECTION 1. *Be it enacted, etc.*, That section three of the act, approved the seventeenth day of May, one thousand nine hundred and twenty-one (Pamphlet Laws, nine hundred twelve), entitled "An act to regulate the drilling, operating, and abandoning of oil and gas wells, and providing a penalty for violation of the provisions of this act," which was amended by the act, approved the first day of May, one thousand nine hundred and twenty-three (Pamphlet Laws, one hundred fifteen), entitled "An act to amend section three of the act, approved the seventeenth day of May, one thousand nine hundred and twenty-one (Pamphlet Laws, nine hundred and twelve), entitled 'An act to regulate the drilling, operating, and abandoning of oil and gas wells, and providing a penalty for violation of the provisions of this act'," is hereby further amended to read as follows:

[*Wells in certain sands may be kept open for repressuring.*]

SEC. 3. The owner or operator of any well or wells which produce oil or gas from the strata known as the "Bradford Sand," "Ball Town Sand," "Clarendon Sand," "Cherry Grove Sand," "Kane Sand," "*Glade Sand*," and "Haskell Sand" shall be permitted to

allow such wells to remain open for the purpose of introducing air, gas, water, or other liquid pressure upon said "Bradford Sand," "Ball Town Sand," "Clarendon Sand," "Cherry Grove Sand," "Kane Sand," "*Glade Sand*," and "Haskell Sand" for the purpose of recovering the oil and gas contained therein, provided that the introduction of such pressure of air, gas, water, or other liquid into said "Bradford Sand," "Ball Town Sand," "Clarendon Sand," "Cherry Grove Sand," "Kane Sand," "*Glade Sand*," and "Haskell Sand" shall be through casing or tubing which shall be so anchored and packed that no other oil or gas bearing sand above or below said "Bradford Sand," "Ball Town Sand," "Clarendon Sand," "Cherry Grove Sand," "Kane Sand," "*Glade Sand*," and "Haskell Sand" shall be affected by the introduction of such pressure. (Approved April 26, 1929.)

STATE OF SOUTH DAKOTA

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STATE OF SOUTH DAKOTA

ACT OF MARCH 10, 1925

CHAP. 250, LAWS OF SOUTH DAKOTA, 1925, P. 283

AN ACT entitled "An act fixing certain duties of the State geologist, providing for the inspection and regulation of the drilling and operation of oil and gas wells, fixing penalties for violations of this act, and repealing chapter 242 of the Session Laws of 1923." (Approved March 10, 1925.)

Section 1. Duties of State geologist.

It shall be the duty of the State geologist to make examinations and reports on any State or school lands of South Dakota when so requested by the commissioner of school and public lands and to make a written report concerning the geology of any lands in which the State of South Dakota is or hereafter may become interested, and on such other matters as the board of school and public lands may desire information upon. Such reports shall be in writing and filed with the commissioner of school and public lands. He shall be charged with the duty of enforcing all the laws of the State of South Dakota relating to the oil and gas industry and to perform such other acts as are provided by the laws of the State of South Dakota relating to the oil and gas deposits therein.

Sec. 2. Rules and regulations.

For the purpose of conserving the natural resources of the State and to prevent waste thereof through negligent methods of operation, the State geologist shall prescribe and enforce rules and regulations governing the drilling, casing, and abandonment of oil and gas wells and the waste of oil and gas therefrom upon all lands in the State of South Dakota excepting public lands subject to the act of Congress approved February 25, 1920 (41 Stat., 437). The rules and regulations so prescribed shall be those from time to time adopted by the Bureau of Mines or by the Secretary of the Interior of the United States pursuant to said act of Congress, governing methods of operation of operators upon lands embraced within permits or leases issued under the provisions of said act of Congress, and it shall be the duty of all persons and corporations drilling or operating oil or gas wells upon patented or State land to comply with all of the said rules and regulations, to file with the State geologist all logs of wells and other reports thereby required, and to case, control, and plug all wells as therein prescribed.

Sec. 3. Appointments of inspectors.

Whenever the State geologist shall require assistants to enable him to carry out the duties imposed upon him by this act and to enforce the rules and regulations so prescribed, he shall appoint, with the approval of the governor, one or more inspectors who shall be petroleum engineers or practical oil-well drillers with not less than three years' field experience, for such time as the State geologist shall determine to be necessary to protect the resources of the State.

Sec. 4. State geologist may delegate authority.

The State geologist may from time to time delegate his authority to supervise the abandonment of wells or the extinguishment of fire to an inspector of the Bureau of Mines or to the field superintendent of any company or operator operating in the same field, who shall receive no compensation; but no such appointment shall be made without the consent of the owner of the well.

Sec. 5. Reports shall be confidential.

All well logs and reports filed with the State geologist by any operator shall be confidential and shall be disclosed to no person without the written authority of the operator, except that the State geologist shall make quarterly confidential and personal reports of such well logs to the governor: *Provided*, That said logs and reports may be offered in evidence in any prosecution under this act.

Sec. 6. Violation and penalty.

Any person or corporation violating the provision of this act or rules and regulations prescribed pursuant hereto or the lawful orders of the State geologist or his inspector under said rules and regulations shall upon conviction be fined not more than $500 or imprisoned not more than six months or both.

Sec. 7. Repeal of prior law.

Chapter 242 of the Session Laws of 1923 relating to oil and gas wells is hereby repealed.

(Approved March 10, 1925.)

ACT OF MARCH 6, 1929

CH. 202, LAWS OF SOUTH DAKOTA, 1929, P. 228, TITLE, "NATURAL GAS"

AN ACT entitled "An act for the protection and conservation of the supply of natural gas of the State of South Dakota, prohibiting the waste and wasteful use of natural gas through the burning or consumption thereof for the manufacturing or producing of carbon or other resultant products therefrom, prohibiting the taking, using, sale, or other disposition of natural gas from gas wells for such purposes, and providing penalties for the violation of such act." (Approved March 6, 1929.)

Section 1. Wasteful and extravagant use defined.

The use, consumption, or burning of natural gas taken or drawn from any natural-gas well or wells, or borings from which natural gas is produced for the products where such natural gas is burned, consumed, or otherwise wasted without the heat therein contained being fully and actually applied and utilized for other manufacturing purposes or domestic purposes, is hereby declared to be a wasteful and extravagant use of natural gas and shall be unlawful when such gas well or source of supply is located within 10 miles of any incorporated town or industrial plant.

Sec. 2. Manufacture of carbon prohibited.

No person, firm, or corporation having the possession or control of any natural-gas well or wells, except as herein provided, or borings from which natural gas is produced, whether as a contractor, owner, lessee, agent, or manager, shall use, sell, or otherwise dispose of natural gas, the product of any such well or wells, or borings for the purpose of manufacturing or producing carbon or other resultant products from the burning or consumption of such natural gas, without the heat therein contained being fully and actually applied and utilized for other manufacturing purposes or domestic purposes.

Sec. 3. Penalty.

Any person, firm, or corporation violating any of the provisions of this act shall be guilty of a misdemeanor and shall be punished by a fine of not less than $100 nor more than $1,000 for each offense; and each and every day in which any person, firm, or corporation shall violate any of the provisions hereof shall constitute a separate offense hereunder and subject the offender to the penalty hereby provided. (Approved March 6, 1929.)

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1918: Ann. Code, 1918, Vol. V, Art. XVIII, p. 6191 . . . 323

3014a1. Wells to be encased.

When any well shall be drilled for the production of petroleum oil, natural gas, salt water, or mineral water, it shall be the duty of the owner thereof, before drilling said well into the oil and gas sand, to encase such well with good and sufficient wrought iron, steel, or metal casing in such manner as to exclude and shut out all surface water, salt water, or fresh water, and to prevent the same from reaching or penetrating said oil and gas sand. (1905, ch. 379, sec. 1.)

3014a2. Abandoned wells to be filled up and plugged; withdrawal of casing.

It shall be the duty of any owner of any well drilled for any of the purposes mentioned in the last section, before abandoning or ceasing to operate the same and before drawing the casing therefrom, to fill up the well with sand or rock sediment to a depth of at least 50 feet above the top of the oil or gas-bearing sand or rock, and drive a round, seasoned wooden plug at least 3 feet in length, equal in diameter to the diameter of the well below the casing, to a point at least 5 feet below the bottom of the casing; and immediately after drawing the casing, except in regions where the well caves after the withdrawal of the casing, shall drive a round, seasoned wooden plug at a point just below where the lower end of the casing rested; which plug shall be at least 3 feet in length, tapering in form, and of the same diameter at the distance of 18 inches from the smaller end as the diameter of the hole below the point at which it is to be driven. After the plug has been properly driven, there shall be filled in on top of the same sand or rock sediment to the depth of at least 50 feet above the top of the oil or gas-bearing sand or rock. (1905, ch. 379, sec. 2.)

3014a3. Wells to be drilled and shut in so as to prevent waste of gas.

It shall be the duty of any owner of any well producing gas to prevent the waste of said gas by escape and within the time hereinafter limited to shut in and confine the same in said well or in the

pipes or pipe lines connected therewith. Said gas, with respect to any well heretofore drilled, shall be so shut in within 90 days after the approval of this act, and with respect to any well hereafter drilled or completed shall be shut in within 90 days after the said well shall reach the lowest oil and gas sand defined or recognized in the gas or oil district in which said well is situated; but if any such well in the course of drilling shall pass through any oil and gas sand which produces gas above the said last or lowest oil and gas sand, then the drilling of said well to the last or lowest oil and gas sand shall be prosecuted with reasonable diligence, so that any waste of gas from the said upper sand shall not continue longer than shall be reasonably necessary: *Provided, however*, That this section shall not apply to any well procuring both oil and gas from the same sand, or to any well while it is being operated as an oil well, or to any well drilled more than five years before the passage of this act. (1905, ch. 379, sec. 3.)

3014a4. Owners of adjacent lands may plug or shut in wells, when; cost and expense may be recovered.

If the owner of any such well shall neglect or refuse to cause said well to be plugged or shut in pursuant to the provisions of sections 3014a2 and 3014a3 for a period of 30 days after a written notice so to do (which notice may be served personally upon such owner, or may be posted in a conspicuous place at or near the well), it shall be lawful for the owner or operator of any adjacent or neighboring lands to enter upon the premises where said well is situated and cause the same to be plugged, if it be an abandoned well, or shut in if not abandoned, pursuant to the provisions hereof; and the reasonable cost and expense incurred in so doing shall be paid by the owner of said well, and may be recovered as debts of like amount are by law recoverable. (1905, ch. 379, sec. 4.)

3014a5. Term "owner," and terms "oil and gas sand" or "sand," are defined.

The term "owner," as herein used with reference to any well, shall mean and include each and every person, persons, copartnership, partnership, association, or corporation owning, managing, operating controlling, or possessing said well as principal or principals or as lessees, contractors, employees, or agents of such principal or principals; and the term "oil and gas sand" or "sand," as herein used, shall mean and include any bed, seam, or stratum of rock, sand, or other material which produces, yields, or contains in quantity sufficient to be utilized, petroleum oil and natural gas, or either of them. (1905, ch. 379, sec. 5.)

3014a6. Penalty for violation of these provisions.

Any person or persons, copartnership, partnership, association, or corporation violating any of the provisions of this chapter shall be liable to a penalty of $100, to be recovered with costs of suit in any civil action to be brought in the name of the State of Tennessee, in any circuit court, and such action may be brought at the instance and upon the relation of any citizen of the State. (1905, ch. 379, sec. 6.)

3014a7. Chancery jurisdiction to restrain waste of natural gas.

Aside from and in addition to the imposition of any penalties under this chapter, it shall be the duty of any chancery court, in the exercise of its equitable jurisdiction, to hear or determine any bill or bills in equity which may be filed to restrain the waste of natural gas in violation of this chapter, and to grant relief by injunction or by other decrees or orders, in accordance with the principles and practice in equity. The complainant in such bill shall have sufficient standing to maintain the same if he shall aver and prove that he is interested in the lands situated within the distance of 1 mile from said well, either as an owner of such land in fee simple or as an owner of leases thereof or of rights therein for the production of oil and gas, or either of them. (1905, ch. 379, sec. 7.)

ANNOTATED CODE OF TENNESSEE, 1918, VOL. V; ART. XVIII, P. 6191

6831. Wells to be plugged, when.

Whenever any well shall have been put down on lands of any person or corporation for the purpose of exploring for or procuring oil or gas, upon abandoning or ceasing to operate the same, the person or corporation drilling or boring the well shall, before drawing casing, fill up the well with sand or rock sediment to the depth of at least 20 feet above the gas-bearing rock, and drive a round, seasoned wooden plug, at least 2 feet in length, equal in diameter to the diameter of the well before the casing, to a point at least 5 feet below the bottom of the casing, and, immediately after the drawing of the casing, shall drive a round wooden plug into the well at the point just below where the lower end of the casing shall have rested, which plug shall be at least 3 feet in length, tapering in form, and to be of the same diameter at the distance of 18 inches from the smaller end of (as) the diameter of the well below the point at which it is to be driven. After the plug has been properly driven, there shall be filled in on the top of the same sand or rock sediment to the depth of at least 5 feet. (1895, ch. 217, sec. 1.)

6832. Penalty.

Any person who shall violate the provisions of the preceding section shall be liable to a penalty of $200, to be recovered as debts of like amounts are by law recoverable. (Id., sec. 2.)

6833. Abandoned wells.

Whenever any person shall neglect or refuse to comply with the provisions of this article with regard to plugging wells, any owner of lands adjacent or in the neighborhood of such unemployed well may enter and take possession of said abandoned well and plug the same as provided by this article, at the expense of the person or company whose duty it may have been to plug the same. (Id., sec. 3.)

STATE OF TEXAS

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Constitution article 16, section 59 (a) 327

LEGISLATION—
1928: Vernon's Complete Texas Statutes, Title 102 327
1931: Vernon's Complete Texas Statutes, 1931, Supplement, Title 102 327
1931: Senate Concurrent Resolution No. 23 370
1932: S. B. 1, Act of Nov. 12, 1932 371

REGULATIONS—
1931: Circular 14, May 1, 1931 376

STATE OF TEXAS

CONSTITUTION—ARTICLE XVI

SEC. 59A. The conservation and development of all of the natural resources of this State, including the control, storing, preservation, and distribution of its storm and flood waters, the waters of its rivers and streams, for irrigation, power, and all other useful purposes, the reclamation and irrigation of its arid, semiarid and other lands needing irrigation, the reclamation and drainage of its overflowed lands, and other lands needing drainage, the conservation and development of its forest, water, and hydroelectric power, the navigation of its inland and coastal waters, and the preservation and conservation of all such natural resources of the State are each and all hereby declared public rights and duties; and the legislature shall pass all such laws as may be appropriate thereto. (Revised Civil Statutes, 1925, p. lxx.)

VERNON'S COMPLETE TEXAS STATUTES
1928 AND 1931 SUPPLEMENT

TITLE 102.—OIL AND GAS

Art. 6004. Casing.

The owner or operator of any well being drilled for oil or gas shall, before drilling into the oil or gas bearing rock, incase such well with good and sufficient wrought iron or steel casing, in such manner as shall exclude all surface or fresh water from the lower part of such well from penetrating the oil or gas bearing rock. Should any well be drilled through the first into a lower oil or gas bearing rock, the same shall be cased in such manner as will exclude all fresh water above the last oil or gas bearing rock penetrated. (Acts 1899, p. 68.)

Art. 6005. Abandoned wells.

The owner or operator of any such well, when about to abandon or cease operating the same and before drawing the casing therefrom, shall securely fill such well with rock, sediment, or with mortar composed of 2 parts sand and 1 part cement or other suitable material to the depth of 200 feet above the top of the first oil or gas-bearing rock, and also in such manner as shall prevent the gas and oil from

escaping therefrom. If the owner or operator of any such well shall fail to or shall inefficiently comply with the provisions of this article, then the owner of the land upon which the well is situated shall forthwith comply therewith. If all the persons hereinbefore named shall fail to or inefficiently fill such well in the manner hereinbefore described, then it shall be lawful for any person, after written demand therefor to any of said persons, to enter the premises where such well is situated, take possession thereof, and fully comply with the provisions of this article. The reasonable cost and expenses thereof shall forthwith be paid by the owner or operator of the well, and on his default by the owner of the land. The amount of such reasonable cost and expense shall forthwith be a lien upon the fixtures and machinery and leasehold interest of the owner and operator of said well, as upon the title and interest of the landowner in the land upon which said well is situated, and may be recovered and enforced against said owner or operator, in the order named, in any court of competent jurisdiction. (Id.)

NOTE.—*Held*, that a lien asserted by a landowner against his lessee's machinery on account of expense incurred in plugging a well improperly cased by the lessee was not a preference lien superior to another creditor's prior lien. (*Waggoner* v. *Oliver*, 256 S. W. 302 (Tex. Cir. App. 1923).)

Art. 6006. Illumination.

No person, copartnership, or corporation shall use natural gas for illuminating purposes by what are known as flambeau lights. Nothing herein shall prohibit the use of "Jumbo" burners or any other burners consuming no more gas than such "Jumbo" burners, but the person, copartnership, or corporation consuming such gas and using such burners in the open air shall inclose the same in glass globes or lamps; and anyone using such gas in the open air, or in or around derricks, shall turn off said gas not later than 8 o'clock in the morning of each day such lights are burning or used, and shall not turn on or relight the same between the hours of 8 o'clock a. m. and 5 o'clock p. m. (Id.)

Art. 6007. Penalties.

Any person, copartnership, or corporation violating any provi sion of the three preceding articles shall be liable to a penalty of $100, to be recovered with the costs of suit in a civil action in the name of the State of Texas, in the county in which the act shall be committed or omitted. Such suit may be brought at the instance of any resident of the State of Texas without security or liability of cost. (Id.)

Art. 6008. Gas to be confined.

Any party or person in possession as owner, lessee, agent, trustee, receiver, or manager, or any person, copartnership, or corporation in possession of any well producing natural gas only, in order to prevent said gas from wasting by escape, shall, within ten (10) days after encountering such gas, confine said gas in said well until said gas shall be utilized for light or fuel; provided, however, the commission may permit the use of such gas for the purpose of being introduced into an oil or gas bearing stratum in order to maintain or increase the rock pressure, or otherwise increase the ultimate recovery of oil or gas from such stratum and for any other purpose which, under circumstances surrounding each particular case, might be found by the commission, after hearing, to be practical and conducive to the public welfare. Any person violating the provisions of this article shall be liable to a penalty of one thousand dollars ($1,000) for each offense to be recovered with the costs of suit in a civil action in the name of the State of Texas, in Travis County, and each day any such violation continues shall be a separate offense, and for which the party in violation shall be held liable for the penalty herein prescribed. (As amended, acts 1931, 42d Leg., 1st called sess., ch. 26, sec. 2.)

F. C. Henderson, Inc. v. *Railroad Commission*, 56 F. (2d) 218 (W. Dist. Tex., Feb. 10, 1932), enjoined the blowing into the air of residue gas from a natural gasoline plant as a "wasteful utilization."

The penalty provided here was called too drastic for enforcement, in *F. C. Henderson, Inc.* v. *Railroad Commission of Texas*, 56 F. (2d) 218 (Feb. 10, 1932).

Constantin et al. v. *Smith*, 57 F. (2d) 227 (E. Dist. Tex., Feb. 18, 1932), enjoined military officers from interfering with production, but on condition that the plaintiffs abide by the railroad commission's production orders pending further hearing. Affirmed, without passing on validity of the statute, *Sterling* v. *Constantin*, U. S. Sup. Ct., December 12, 1932.

Art. 6009. Disposition of penalty.

The amount of any penalty recovered under any preceding article of this title when collected shall be paid, one half into the school fund of the county in which said suit is brought and one half to said person at whose instance such suit shall be brought. (Acts 1899, p. 68.)

Art. 6010. Water in wells.

If any person or persons in this State, in boring any well or wells, for oil or gas, shall pierce any cap rock or other geological formation in such manner as to cause a flow of salt water or fresh water injurious to any oil well already bored, or to any oil or gas deposits,

and which shall or may probably result in the injury of such oil or gas field, or to such gas or oil wells already bored, such person or persons shall, if the flow of water can not be cased off, immediately abandon all work upon such well and plug and fill the same in such manner and with such materials as will stop the flow of said water; and it shall be unlawful for any well owner, or person boring any such well, to remove the casing from the well drilled until the flow of water shall be stopped, either by casing off or plugging such well. The provisions of this article shall only apply where such cap rock or other formation is pierced at a depth below the horizon at which oil or gas has already been discovered. (Acts 1905, p. 228.)

Art. 6011. Suits and penalties.

Any person or persons, copartnership, corporation, or association of persons, violating any provision of the preceding article, shall be liable to a penalty of not less than $500 nor more than $5,000, to be recovered with the costs of suit in a civil action brought in the name of the State of Texas in the county in which the act complained of shall have been committed or omitted. Such suit may be brought at the instance of any resident of this State, without security or liability for costs. The amount of said penalty when collected shall be paid into the school fund of the county in which said suit is brought. Such suit may be brought at the instance of either the district attorney or the county attorney of the county in which the act was committed or omitted. (Id.)

Art. 6012. May plug or shut in.

If the owner of any such well shall neglect or refuse to cause said well to be plugged, or shut in, as herein provided, for a period of 20 days after a written notice to do so, which notice may be served personally upon such owner, or may be posted at a conspicuous place at or near the well, it shall be lawful for the owner or operator of any adjacent or neighboring lands to enter upon the premises where said well is situated and cause the same to be plugged if it be an abandoned well, or shut in if not abandoned, pursuant to the provisions hereof. The reasonable cost and expense incurred in so doing shall be paid by the owner of said well, and may be recovered as debts of like amount are by law recoverable. (Acts, 1913, p. 212.)

NOTE.—*Heard* v. *Nichols*, 293 S. W. 805 (Com. App. Tex.), 1927, sustained the right of the lessor to plug an improperly abandoned well, saying "our statutory conservation regulations prevent such waste of gas."

Art. 6013. Petition to restrain waste.

In addition to the penalties provided in this title, it shall be the duty of any district judge, whether in term time or vacation, to hear and determine any petition which may be filed to restrain the waste of natural gas in the violation of this law, and to issue such mandatory or restraining orders as may in his judgment be necessary. Such petition may be filed by any citizen of this State, and the same need allege no further financial interest than the petitioner possesses in common with all citizens of the State in the natural resources thereof. (Id.)

Art. 6014. Waste.

The production, storage, or transportation of crude petroleum oil or of natural gas in such manner, in such amount, or under such conditions as to constitute waste is hereby declared to be unlawful and is prohibited. The term "waste" among other things shall specifically include:

(A) The operation of any oil well or wells with an inefficient gas-oil ratio, and the commission is hereby given authority to fix and determine by order such ratio.

(B) The drowning with water of any stratum or part thereof capable of producing oil or gas, or both oil and gas, in paying quantities.

(C) Underground waste or loss however caused and whether or not defined in other subdivisions hereof.

(D) Permitting any natural-gas well to burn wastefully.

(E) The wasteful utilization of natural gas, provided, however, the utilization of gas, lawfully permitted to be produced from a well producing both oil and gas, for manufacturing gasoline shall not be construed to be wasteful, and provided further that the utilization of natural gas authorized by the commission under the provisions of section 2 of acts of the forty-second legislature, first called session, chapter 26, shall not be construed as wasteful.

(F) The creation of unnecessary fire hazards.

(G) Physical waste or loss incident to, or resulting from, so drilling, equipping, locating, spacing, or operating well or wells as to reduce or tend to reduce the total ultimate recovery of crude petroleum oil or natural gas from any pool.

(H) Waste or loss incident to, or resulting from, the unnecessary, inefficient, excessive, or improper use of the reservoir energy, including the gas energy or water drive, in any well or pool; however, it is not the intent of this act to require repressuring of an oil pool or that the separately owned properties in any pool be unitized under one management, control, or ownership.

(I) Surface waste or surface loss, including unnecessary or excessive surface losses or destruction of crude petroleum oil or natural gas without beneficial use.

(J) The escape into the open air, from a well producing both oil and gas, of natural gas in excess of the amount which is necessary in the efficient drilling or operation of the well.

(K) The production of crude petroleum oil in excess of transportation or market facilities or reasonable market demand. The commission is authorized to determine when such excess production exists or is imminent, and to ascertain the reasonable market demand.

The commission is expressly authorized to consider any or all of the above definitions in making rules, regulations, or orders to prevent waste of oil or gas.

(As amended by S. B. 1, November 12, 1932.)

NOTE 1.—Prior to August 12, 1931, this article read as follows:

"*Art. 6014. Waste.*—(As amended by act of March 29, 1929; General and Special Laws, 1929, p. 694, ch. 313.)

"Neither natural gas nor crude petroleum shall be produced, transported, stored, or used in such manner or under such conditions as to constitute waste: *Provided, however*, This shall not be construed to mean economic waste. The term "waste," in addition to its ordinary meaning, shall include permitting (*a*) escape into the open air of natural gas except as may be necessary in the drilling or operation of a well; (*b*) drowning with water of any stratum capable of producing oil or gas or both oil and gas in paying quantities; (*c*) underground waste; (*d*) any natural gas well to wastefully burn; (*e*) the wasteful utilization of natural gas; (*f*) the creation of unnecessary fire hazards."

Under the article as it then stood the following cases arose:

NOTE 2.—Rule 25, limiting gas production to 50 per cent of open flow, promulgated under the authority of this article, was sustained in *Magnolia Petroleum Co.* v. *Stroud*, 3 S. W. (2d) 462 (1928).

NOTE 3.—*Held*, that probable waste of drilling money was not recognized by this article as a basis for refusal of a drilling permit under Rule 37. *State* v. *Jarmon*, 25 S. W. (2d) 936 (Tex. Civ. App., 1930).

NOTE 4.—Proration orders issued prior to enactment of article 6049c, under the general authority of articles 6014, 6023, and 6029, and found supported only by evidence of market demand and not of physical conditions in the field, were held not authorized in *MacMillan* v. *Railroad Commission*, 51 Fed. (2d) 400 (W. Dist. Tex., July 28, 1931). But see, *contra*, *Danciger Oil & Refining Co.* v. *Railroad Commission*, 49 S. W. (2d) 837 (Tex. Civ. App., 1932), in which the Commission had taken evidence of physical waste. (Writ of error granted.)

The MacMillan case was appealed to the United States Supreme Court. Pending the decision, however, the Texas statutes were twice amended; first by the Act of Aug. 12, 1931, which authorized proration, and second, by the Act of Nov. 12, 1932, which authorized restriction of production to market demand. The Supreme Court reversed the decree of the District Court and remanded the case, with directions to dismiss the bill of complaint on the authority of cases which have established the rule that where a case becomes moot pending appeal the Court will direct the decree to be reversed. (Order No. 32, of Dec. 12, 1932.)

NOTE 5.—*Held*, the enumerated forms of waste constituted "a recital of some of the ways in which then known waste occurred, and were never intended by the legislature as an exclusive definition of the only kinds of waste which the legislature recognized, nor as a denial to the commission of power to deal with any other kind of waste no matter how committed." *Danciger Oil & Refining Co.* v. *Railroad Commission*, 49 S. W. (2d) 837 (Tex. Civ. App., 1932).

The case arose under the statute prior to the 1931 amendments, although decided after, and sustained proration orders as authorized under the commission's power to prevent waste.

NOTE 6.—This section was amended by the act of August 12, 1931 (Acts, 1931, 42d Leg., 1st C. S., ch. 26, sec. 1), to read as follows:

"*Art. 6014.* Neither natural gas nor crude petroleum shall be produced, transported, stored, or used in such manner or under such conditions as to constitute waste; provided, however, this shall not be construed to mean economic waste, and the commission shall not have power to attempt by order or otherwise, directly or indirectly, to limit the production of oil to equal the existing market demand for oil; and that power is expressly withheld from the commission, and no part of this act shall ever be construed, so as to prevent the storage of oil except for the prevention of physical waste. As used herein the term "waste," in addition to its ordinary meaning, shall include:

"(*a*) The operation of any oil well or wells with a gas-oil ratio exceeding that fixed for such well or wells by order of the commission, and the commission is hereby given authority to fix and determine by order such ratio;

"(*b*) Drowning with water of any stratum capable of producing oil or gas or both oil and gas in paying quantities;

"(*c*) Underground waste caused by the premature intrusion of water into any producing well or wells or into wells producing from the same stratum, resulting from improper drilling or producing methods by the owner of such well or wells;

"(*d*) Permitting any natural gas well to wastefully burn;

"(*e*) The wasteful utilization of natural gas; provided, however, the utilization of gas from a well producing both oil and gas, for manufacturing natural gasoline, shall not be construed to be waste;

"(*f*) The creating of unnecessary fire hazards;

"(*g*) Actual physical waste incident to or resulting from so drilling, equipping, locating, spacing, or operating wells as to reduce, or tend to reduce, the ultimate total recovery of crude petroleum oil or natural gas from any well or pool;

"(*h*) Waste incident to or resulting from the unnecessary inefficient, excessive, or improper use of the gas, gas energy, or water drive in any well or pool; however, it is not the intent of this act to require repressuring of an oil pool, or that the separately owned properties in any pool be utilized under one management, control, or ownership;

"(*i*) Surface waste, including unnecessary or excessive surface losses or destruction of crude petroleum oil or natural gas without beneficial use;

"(*j*) The escape into the open air of natural gas except as may be necessary in the drilling or operation of a well; this section shall be cumulative of and not contrary to the above definitions of waste, and shall not be construed to conflict therewith;

"(*k*) Waste incident to the inequitable utilization of gas energy, water drive, or other natural force, resulting from the inequitable withdrawal from any common pool; provided, however, that the commission shall only invoke this definition of waste for the purpose of preventing discrimination in production as between producers disposing of their oil and/or gas by means of regulated carriers and those producers disposing of their oil and/or gas by means of unregulated carriers;

"The commission shall at no time have authority to make any rule or regulation, or to in anywise determine or hold that any mode, manner, or process of refining crude oil constitutes waste;

"Nothing in this act shall require the owner of any gas and/or oil well to curtail the production thereof unless the same is being operated in such manner as to constitute waste as herein defined or contributing to waste as herein defined."

The article stood in this form from August 12, 1931, to November 12, 1932. Under it the following cases arose:

NOTE 7.—*F. C. Henderson, Inc.*, v. *Railroad Commission*, 56 F. (2d) 218 (W. Dist. Tex., Feb. 10, 1932), enjoined the blowing into the air of residue gas from a natural gasoline plant as a "wasteful utilization."

NOTE 8.—*Constantin et al.* v. *Smith*, 57 F. (2d) 227 (E. Dist. Tex., Feb. 18, 1932), enjoined military officers from interfering with production, but on condition that the plaintiffs abide by the railroad commission's production orders pending further hearing. The decision consolidated cases arising before and after the amendments.

An appeal was taken to the United States Supreme Court from both the temporary and the permanent injunctions. The appeal from the temporary injunction was dismissed, the permanent injunction having superseded it. The permanent injunction was affirmed, the action of the military being held unwarranted and in violation of the Fourteenth Amendment. The court did not pass upon the conservation statutes. (*Sterling* v. *Constantin*, Nos. 11, 453; Dec. 12, 1932.)

NOTE 9.—*People's Petroleum Producers', Inc.*, v. *Sterling et al.*, 60 F. (2d) 1041 (E. Dist. Tex., July 19, 1932), refused a temporary injunction against enforcement of the railroad commission's proration orders, holding them to have been supported by adequate evidence of physical waste. The 1931 amendments to this article had intervened between this decision and the prior case of *MacMillan* v. *Railroad Commission*, 51 F. (2d) 400 (W. Dist. Tex., July 28, 1931).

NOTE 10.—But when this case came on for final decision under the caption *People's Petroleum Producers', Inc.*, v. *Smith* (1 Fed. Supp. 361, October, 1932) a permanent injunction was granted on the ground that the proration orders although issued under valid statutes were so inequitable as to amount to the taking of property without due process. But the court said:

"We have repeatedly, and without varying, held that the State may, in the interest of the conservation of its natural resources, provide by legislation within constitutional limits for the regulation of the drilling for, the production and the marketing of oil to prevent waste; that it may constitute the commission statutory agent of the State, and may delegate to it authority to make within the limits of the grant of power just and equitable rules and regulations to effect these ends. We have also held that in the act of appointment the legislature has strictly defined and limited the powers of the commission."

This decision, which arose under a statute which specifically prohibited the limiting of production to market demand (art. 6014), was immediately followed by an amendment to the statute (act of November 12, 1932) conferring authority on the commission to effect such restrictions.

Art. 6015. Prevention of waste.

All operators, contractors, or drillers, pipe-line companies, or gas-distributing companies, drilling for or producing crude oil or natural gas or piping oil or gas for any purpose shall use every possible precaution in accordance with the most approved methods to stop

and prevent waste of oil and gas or both, in drilling and producing operations, storage, or in piping or distributing, and shall not wastefully utilize oil or gas, or allow same to leak or escape from natural reservoirs, wells, tanks, containers, or pipes. (Acts 1919, p. 285.)

NOTE.—In *Southwestern Oil & Gas Co.* v. *Kimball & Development Co.*, 224 S. W. 1111 (Tex. Civ. App., 1920), a lessor sued to enjoin removal by his lessee of casing from a well. The lease gave the lessor the right to drill deeper in event of abandonment by the lessee. An injunction was ordered issued, citing L. 1919, c. 155, but not Rule 10.

Art. 6016. Confining gas in wells.

Whenever natural gas in such quantities, in a gas-bearing stratum known to contain natural gas in such quantities, is encountered in any well drilled for oil or gas in this State, such gas shall be confined to its original stratum until such time as the same can be produced and utilized without waste and all such strata shall be adequately protected from infiltrating waters. (Id.)

Art. 6017. Penalty.

Any person, firm, corporation, or any officer, agent, or employee thereof directly or indirectly violating any provision of the three preceding articles shall be subject to a penalty of not more than $5,000 to be recovered by suit brought in the name of the State of Texas by any district or county attorney on the direction of the railroad commission. Every day that such violation continues shall be a separate offense. (Id.)

Art. 6018. Pipe-line carriers.

Every person, firm, corporation, limited partnership, joint-stock association, or association of any kind whatever—

1. Owning, operating, or managing any pipe line or any part of any pipe line within the State of Texas for the transportation of crude petroleum to or for the public for hire, or engaged in the business of transporting crude petroleum by pipe line; or

2. Owning, operating, or managing any pipe line or any part of any pipe line for the transportation of crude petroleum to or for the public for hire, and which said pipe line is constructed or maintained upon, over, or under any public road or highway, or in favor of whom the right of eminent domain exists; or

3. Owning, operating, or managing any pipe line or any part of any pipe line or pipe lines for transportation to or for the public for hire, of crude petroleum, and which said pipe line or pipe lines

is or may be constructed, operated, or maintained across, upon, along, over, or under the right of way of any railroad, corporation, or other common carrier required by law to transport crude petroleum as a common carrier; or

4. Owning, operating, or managing or participating in ownership, operation, or management under lease, contract of purchase, agreement to buy or sell, or other agreement or arrangement of any kind whatsover, any pipe line or pipe lines, or part of any pipe line, for the transportation from any oil field or place of production within this State to any distributing, refining, or marketing center or reshipping point thereof, within this State, of crude petroleum bought of others;

Is hereby declared to be a common carrier and subject to the provisions of this law. The provisions of this law shall not apply to those pipe lines which are limited in their use to the wells, stations, plants, and refineries of the owner and which are not a part of the pipe-line transportation system of any common carrier as above defined; nor shall such provisions apply to any property of such a common carrier which is not a part of or necessarily incident to its pipe-line transportation system. (Acts 1917, p. 48.)

Art. 6019. Control of.

It is declared that the operation of common carrier pipe lines is a business in which the public is interested, and is subject to regulation by law. The business of purchasing, or of purchasing and selling crude petroleum, using in connection with such business a pipe line of the class subject to this law to transport the crude petroleum so bought or sold, shall not be conducted, unless such pipe line so used is a common carrier within the purview of this law, and subject to the jurisdiction herein conferred upon the railroad commission. (Id.)

Art. 6020. Powers of carrier.

The right to lay, maintain, and operate pipe lines, together with telegraph and telephone lines incidental to and designed for use only in connection with the operation of such pipe lines along, across, or under any public stream or highway in this State, is hereby conferred upon all said common-carrier pipe lines. Any person, firm, limited partnership, joint-stock association, or corporation may acquire such right by filing with said commission a written acceptance of the provisions of this law expressly agreeing that in consideration of the rights so acquiring it shall be and become a common-carrier pipe line, subject to the duties and obligations conferred or imposed by this law.

Art. 6021. Injury to roads, etc.

The right to run pipe lines, telegraph and telephone lines along, across, or over any public road or highway can only be exercised upon condition that the traffic thereon be not interfered with, and that such road or highway be promptly restored to its former condition of usefulness, and the restoration thereof to be subject also to the supervision of the commissioners' court or other proper local authority. In the exercise of the privileges herein conferred, such pipe lines shall compensate the county or road district, respectively, for any damage done to such public road. Nothing herein shall be construed to grant any pipe-line company the right to use any public street or alley of any incorporated or unincorporated city or town, except by express permission from the governing body thereof. (Id.)

Art. 6022. Eminent domain.

Every person, firm, corporation, limited partnership, joint-stock association, or association of any kind whatsoever owning, operating, or managing any pipe line, or any part of any pipe line within this State for the transportation of crude petroleum that is declared by this title to be a common carrier, shall have the right and power of eminent domain in the exercise of which he, it, or they may enter upon and condemn the lands, rights of way, easements, and property of any person or corporation necessary for the construction, maintenance, or operation of his, its, or their common carrier pipe line; and shall have the right to lay his, its, or their pipes or pipe lines under any railroad, railroad right of way, street railroad, canal, or stream in this State; and along and under any street or alley in any incorporated city or town in this State with the consent and under the direction of the governing body of such city or town; and across and under any public road, provided that no pipes or pipe lines shall be laid parallel with and on any public highway closer than 15 feet from the improved section thereof except with the approval and under the direction of the commissioners' court of the county in which such public highway is located; and such other rights in the matter of laying pipes and pipe lines as are conferred by article 1497, subject to the conditions, limitations, and restrictions therein stated. (Acts 1919, p. 273.)

Art. 6023. Jurisdiction.

Power and authority are hereby conferred upon the railroad commission of Texas over all common carrier pipe lines conveying oil or gas in Texas, and over all oil and gas wells in Texas, and over all persons, associations, or corporations owning or operating pipe lines in Texas, and over all persons, associations, and corporations owning

or engaged in drilling or operating oil or gas wells in Texas; and all such persons, associations, and corporations and their pipe lines, oil and gas wells are subject to the jurisdiction conferred by law upon the commission, and the commission is authorized and empowered to make all necessary rules and regulations for the government and regulation of such persons, associations, and corporations and their operations, and the attorney general shall enforce the provisions of this title by injunction or other adequate remedy and as otherwise provided by law. The word "commission," as used in this title, shall mean the railroad commission of Texas. The word "commissioner" shall mean any member of the railroad commission.

NOTE 1.—Proration orders issued prior to enactment of article 6049c, under the general authority of articles 6014, 6023, and 6029, and found supported only by evidence of market demand and not of physical conditions in the field, were held not authorized in *MacMillan* v. *Railroad Commission*, 51 Fed. (2d) 400 (W. Dist. Tex., July 28, 1931). But see, *contra*, *Danciger Oil & Refining Co.* v. *Railroad Commission*, 49 S. W. (2d) 837 (Tex. Civ. App., 1932), in which the commission had taken evidence of physical waste. (Writ of error granted.) On appeal to the United States Supreme Court, *Railroad Commission* v. *MacMillan*, having become moot, was reversed. (Order 32, Dec. 12, 1932.)

NOTE 2.—Cited in support of the commission's power to impose proration under its general authority to prevent waste, prior to enactment of the proration statute (art. 6049c). *Danciger Oil & Refining Co.* v. *Railroad Commission*, 49 S. W. (2d) 837 (Ct. Civ. App., Mar. 23, 1932).

Art. 6024. Powers.

In all matters pertaining to the discharge of its duties and the enforcement of its powers and authority as provided by the terms of this title, the commission shall institute suits, hear and determine complaints, require the attendance of witnesses, pay their expenses out of the fund herein created, and sue out such writs and process as may be necessary for the enforcement of its orders, and punish for contempt or disobedience of its orders as the district court may do.

Cited in *State* v. *Jarmon*, 25 S. W. (2d) 936 (Tex. Civ. App., 1930).

Art. 6025. Attendance of witnesses.

If any witness fails or refuses to obey a subpœna from the commission, or a commissioner, the commission or commissioner may issue an attachment for such witness as in civil cases and compel him to attend before the commission or any commissioner thereof and give his testimony upon such matter as may be lawfully required of him, and to bring with him and produce on examination such records, books, vouchers, memoranda, true copies thereof, prints, and such other matter as may be required, if any, in such subpœna.

Art. 6026. Criminating testimony.

If a witness fails or refuses to attend on being summoned, or to answer any question propounded to him, or to produce any record or data required to be produced by such subpœna, the claim that any such testimony may tend to criminate the person giving it shall not excuse such witness from testifying or producing such records and data, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

Art. 6027. Witness fees.

Each witness who shall appear before the commission or a commissioner at a place outside the county of his residence shall receive for his attendance $3 per day and 3 cents per mile traveled by the nearest practicable route in going to and returning from the place of meeting of said commission or commissioner, which shall be ordered paid upon the presentation of proper vouchers, sworn to by such witness and approved by the commission or chairman thereof: *Provided*, That no witness shall be entitled to any witness fees or mileage who is directly or indirectly interested in any public utility involved in or concerning which, in any way, the investigation or hearing on account of which he is summoned, shall relate, or who is in anywise interested in any stock, bond, mortgages, security, or earnings of any such utility, or who shall be the agent, attorney, or employee of such utility, or any officer thereof, when summoned at the instance of such utility. No witness furnished with free transportation shall receive pay for the distance he may have traveled on such free transportation.

Art. 6028. Officer's fees.

The sheriff or constable executing any process issued by the commission or any commissioner thereof under the provisions of this title shall receive such compensation as the commission may allow.

Art. 6029. Rules and regulations.

The commission shall make and enforce rules, regulations, or orders for the conservation of crude petroleum oil and natural gas and to prevent the waste thereof, including rules, regulations, or orders for the following purposes:

(1) To prevent the waste, as hereinbefore defined, of crude petroleum oil and natural gas in drilling and producing operations and in the storage, piping, and distribution thereof.

(2) To require dry or abandoned wells to be plugged in such way as to confine crude petroleum oil, natural gas, and water in the strata in which they are found and to prevent them from escaping into other strata.

(3) For the drilling of wells and preserving a record thereof.

(4) To require wells to be drilled and operated in such manner as to prevent injury to adjoining property.

(5) To prevent crude petroleum oil and natural gas and water from escaping from the strata in which they are found into other strata.

(6) To establish rules and regulations for shooting wells and for separating crude petroleum oil from natural gas.

(7) To require records to be kept and reports made by oil and gas drillers, operators, and carriers of crude petroleum oil or natural gas and by its inspectors.

(8) It shall do all things necessary for the conservation of crude petroleum oil and natural gas and to prevent the waste thereof, and shall make and enforce such rules, regulations, or orders as may be necessary to that end.

(As amended by S. B. 1, November 12, 1932.)

NOTE 1.—Prior to August 12, 1931, this article read as follows:

"*Art. 6029. Rules and regulations.*—The commission shall make and enforce rules and regulations for the conservation of oil and gas:

"1. To prevent the waste of oil and gas in drilling and producing operations and in the storage, piping, and distribution thereof.

"2. To require dry or abandoned wells to be plugged in such way as to confine oil, gas, and water in the strata in which they are found, and to prevent them from escaping into other strata.

"3. For the drilling of wells and preserving a record thereof.

"4. To require such wells to be drilled in such manner as to prevent injury to the adjoining property.

"5. To prevent oil and gas and water from escaping from the strata in which they are found into other strata.

"6. To establish rules and regulations for shooting wells and for separating oil from gas.

"7. To require records to be kept and reports made by oil and gas drillers, operators, and pipe-line companies, and by its inspectors.

"8. It shall do all things necessary for the conservation of oil and gas, whether here especially enumerated or not, and shall establish such other rules and regulations as will be necessary to carry into effect this law and to conserve the oil and gas resources of the State. (Acts 1919, p. 285.)"

For cases arising under the article as it then read see article 6014, notes 4, 5.

NOTE 2.—The article was amended by the act of August 12, 1931 (42d Leg., 1st C. S., ch. 26, sec. 15), to read as follows:

"*Art. 6029. Rules and regulations.*—The commission shall make and enforce rules and regulations for the conservation of oil and gas:

"1. To prevent the physical waste, as hereinbefore defined, of oil and gas in drilling and producing operations and in the storage, piping, and distribution thereof;

"2. To require dry or abandoned wells to be plugged in such way as to confine oil, gas, and water in the strata in which they are found and to prevent them from escaping into other strata;

"3. For the drilling of wells and preserving a record thereof;

"4. To require such wells to be drilled in such manner as to prevent injury to adjoining property;

"5. To prevent oil and gas and water from escaping from the strata in which they are found into other strata;

"6. To establish rules and regulations for shooting wells and for separating oil from gas;

"7. To require records to be kept and reports made by oil and gas drillers, operators, and pipe-line companies and by its inspectors;

"8. It shall do all things necessary to prevent physical waste of oil and gas as hereinbefore defined whether herein enumerated or not and shall establish such rules and regulations as will be necessary to carry into effect this law and to conserve the oil and gas of this State by preventing physical waste as herein defined."

The article stood in this form from August 12, 1931, to November 12, 1932. For cases arising under it see article 6014, notes 7, 8, 9, 10.

Art. 6030. Supervisor and employees.

The commission shall employ a chief supervisor of its oil and gas division to aid the commission in the enforcement of the provision of this act and all oil or gas conservation laws of Texas, and all rules, regulations and orders of said commission made thereunder. He shall also perform the duties placed upon the pipe line expert as set out in the pipe line statutes of this State. The commission may also appoint a chief deputy supervisor and such other deputy supervisors as may be necessary to assist in carrying out the provisions of this act and related statutes and shall employ such other assistants and clerical help as may be necessary for the same purpose. The salary of the chief supervisor and of chief deputy supervisor and of the deputy supervisors shall be fixed by the legislature in its appropriation bill for the railroad commission; provided such salaries shall not exceed the following amounts: That of the chief supervisor shall be six thousand ($6,000.00) dollars per annum, that of the chief deputy supervisor shall be five thousand ($5,000.00) dollars per annum, and that of the deputy supervisors shall be thirty-six hundred ($3,600.00) dollars each per annum. In addition to any other qualifications that may be required by the commission, no one shall hereafter be appointed chief supervisor who has not had at least five years' experience in some line of the oil or gas business, or in some other business or profession calculated to fit him for the performance of his duties. No one shall hereafter be appointed as chief deputy supervisor who has not had at least three years' experience in oil and gas field work, and no one shall hereafter be appointed deputy supervisor who has not had at least two years' experience in oil and gas field work, a substantial portion of which shall be in the drilling or production department. All salaries and other expenses of every kind and character necessary in the administration and enforcement of this act shall be paid out of the funds created

in chapter 30, acts of 1917, being now article 6032, Revised Civil Statutes of 1925, and in the manner therein provided. The chief supervisor, chief deputy supervisor and all deputy supervisors and all other employees shall perform the duties prescribed by the railroad commission and in conformity to the rules and regulations of the commission dealing with the production, transportation and conservation of crude oil and natural gas. (As amended, Acts 1929, 41st Leg., ch. 313, sec. 3.)

NOTE.—Cited in *State* v. *Jarmon*, 25 S. W. (2d) 936 (Tex. Civ. App., 1930).

Art. 6031. Duties of supervisor.

The supervisor and his deputies shall supervise the plugging of all abandoned wells and the shooting of wells and conform to the rules and regulations of the commission, dealing with the production and conservation of oil and gas. The supervisor shall gather information, and assist the commission in the performance of its duties under this title. (Acts 1919, p. 285.)

NOTE.—Cited in *State* v. *Jarmon*, 25 S. W. (2d) 936 (Tex. Civ. App., 1930).

Art. 6032. Tax.

There is hereby levied a tax of one-tenth of one cent per barrel of forty-two (42) standard gallons of crude petroleum produced within this State, which shall be in addition to and collected in the same manner as the present gross receipts production tax on crude petroleum. Producers of crude petroleum are hereby required to make reports of production in the same manner and under the same penalties as for the gross production tax. The tax thus collected shall be paid into the State treasury as other revenues, and shall be paid out on warrants as other funds. The funds derived from this tax shall be used for the administration of this law and the laws mentioned and referred to by this act.

Any yearly excess of the tax over and above the requirements of the commission shall become a part of the general revenues of the State and any deficiency shall be made up out of the general revenues of the State. (As amended, Acts 1931, 42d Leg., 1st called sess., ch. 26, sec. 22.)

Art. 6033. Certificate of compliance.

Owners or operators of gas wells shall, before connecting with any oil or gas pipe lines, secure from the commission a certificate showing compliance with the oil and gas conservation laws of the State and conservation orders of the commission. Pipe-line companies shall not connect with oil or gas wells until the owners or operators thereof shall furnish certificates from the commission

that the conservation laws of the State have been complied with, provided this law shall not prevent a temporary connection with any well or wells in order to take care of production and prevent waste until opportunity shall have been given the owner or operator of said well to secure certificate showing compliance with the conservation laws of the State. (Acts 1919, p. 285.)

NOTE.—*Gilmore* v. *Straughan*, 10 S. W. 2d 589 (1928), held that a carrier could not be required to connect with a well drilled in violation of the spacing requirements of Rule 37, infra.

Art. 6034. Books and records.

All owners and operators of oil and gas wells shall keep books, showing accurately the amount of stock sold and unsold and amount of promotion money paid, amount of oil and gas produced and disposed of, with the price for which the same was sold, together with the receipts from the sale or transfer of leases or other property, and the disbursements made in connection with or for the benefit of such business; which books shall be kept open for the inspection of the commission or any accredited representative thereof, and of any stockholder or shareholder or royalty owner in said business, and shall report such information to the commission for its information when required by the commission to do so. (Acts 1919, p. 287; Acts 2d called sess., 1919, p. 79.)

Art. 6035. Report to commission.

Any person, firm, partnership, joint-stock association, corporation, or other organization, domestic or foreign, operating wholly or partially within this State, acting as principal or agent for another, for the purpose of drilling, owning, or operating any oil or gas well, or owning or controlling leases of oil and mineral rights or the transportation of oil or gas by pipe line, shall immediately file with the commission the name of the company or organization, giving the name and post-office address of the organization, the plan under which it was organized, and the names and post-office addresses of the trustee or trustees thereof, and the names and post-office addresses of the officers and directors. (Id.)

Art. 6036. Penalty.

In addition to any penalty that may be imposed by the commission for contempt for the violation of its orders, any person, firm, corporation, joint stock associations, or any officer, agent, or employee, thereof, violating any of the provisions of this act or title 102 of the Revised Civil Statutes of 1925, or of any of the rules, regulations, or orders of said commission made in pursuance thereof, shall be subject to a penalty of not more than one thousand dollars ($1,000)

for each and every day of such violation, to be recovered in any court of competent jurisdiction in the county in which the violation occurs, such suit by direction of the commission to be instituted and conducted in the name of the State of Texas, by the Attorney General of the State of Texas, or by the county or district attorney of the county in which the violation occurs. (As amended, acts 1931, 42d Leg., 1st called sess., ch. 26, sec. 3.)

NOTE 1.—The penalty provided here, as amended in 1931, was called too drastic for enforcement, in *F. C. Henderson, Inc.* v. *Railroad Commission of Texas*, 56 F. (2d) 218 (Feb. 10, 1932), but an injunction was withheld because the penalty had not been claimed by the State.

NOTE 2.—*Constantin et al.* v. *Smith*, 57 F. (2d) 227 (E. Dist. Tex., Feb. 18, 1932), enjoined military officers from interfering with production, but on condition that the plaintiffs abide by the railroad commission's production orders pending further hearing. Affirmed, *Sterling* v. *Constantin*, U. S. Sup. Ct., Dec. 12, 1932.

Art. 6036A. Notice of hearing.

No rule or regulation shall be adopted under the provisions of this act or under the provisions of title 102 of the Revised Civil Statutes of Texas, 1925, dealing with the conservation of oil and gas and the prevention of the waste thereof, except after hearing upon at least 10 days' notice given in the manner and form prescribed by the commission. (Acts 1929, 41st Leg., ch. 313, sec. 5.)

Art. 6036B. Court review of commission's ruling.

If any person, firm, corporation or other party at interest be dissatisfied with any rule, regulation, or order adopted by the commission in pursuance of the provisions of this act such dissatisfied party may file a petition setting forth the particular cause of objections thereto in a court of competent jurisdiction in Travis County against the commission as defendant. Said action shall have precedence over all other causes on the docket of a different nature and shall be tried and determined as other civil cases in said court. Either party to said action may have the right of appeal; and said appeal shall at once be returnable to the Appellate Court, and said action so appealed shall have precedence in said Appellate Court of all causes of a different character therein pending. If the court be in session at the time such right of action occurs the suit may be filed during such term and stand ready for trial after 10 days' notice. In all trials under this section the burden of proof shall rest upon the plaintiff. (Acts 1929, 41st Leg., ch. 313, sec. 6.)

NOTE 1.—Cited in *State* v. *Jarmon*, 25 S. W. (2d) 936 (Tex. Civ. App., 1930).

NOTE 2.—Cited in support of the Railroad Commission's power to impose proration under its general authority to prevent waste, prior to enactment of the proration statute (art. 6049c). *Danciger Oil & Refining Co.* v. *Railroad Commission*, 49 S. W. (2d) 837 (Ct. Civ. App., Mar. 23, 1932).

Art. 6037. Rates and charges.

The commission shall establish and enforce rates of charges and regulations for gathering, transporting, loading, and delivering crude petroleum by such common carriers in this State, and for the use of storage facilities necessarily incident to such transportation, and prescribe and enforce rules and regulations for the government and control of such common carriers in respect to their pipe lines and receiving, transferring, and loading facilities, and it shall also exercise such power upon petition by any person showing a substantial interest in the subject. (Acts 1917, p. 48.)

Art. 6038. Hearing, notice.

No order establishing or prescribing rates, rules, and regulations shall be made except after hearing and at least 10 days and not more than 30 days' notice to the person, firm, corporation, partnership, joint-stock association, or association, owning or controlling and operating the pipe line or pipe lines affected. (Id.)

Art. 6039. Reimbursement, when.

If any rate shall be filed by a pipe line and complaint against same or petition to reduce same shall be filed by a shipper, and such complaint be sustained, in whole or in part, all shippers who shall have paid the rates so filed by the pipe line shall have the right to reparation or reimbursement of all excess in transportation charges so paid over and above the proper rate as finally determined on all shipments made after the date of the filing of such complaint. (Id.)

Art. 6040. Exchange of facilities.

Every common carrier as above defined shall exchange crude petroleum tonnage with each like common carrier and the commission is authorized to require such connections and facilities for the interchange of such tonnage to be made at every locality reached by both pipe lines whenever a necessity therefor exists and subject to such rates and regulations as may be made by the commission; and any such common carrier under like rules and regulations shall be required to install and maintain facilities for the receipt and delivery of crude petroleum of patrons at all points on such pipe line. (Id.)

Art. 6041. Grades of oil carried.

No carrier shall be required to receive or transport any crude petroleum except such as may be marketable under rules and regulations to be prescribed by the commission, and the commission shall make rules for the ascertainment of the amount of water and other foreign matter in oil tendered for transportation, and for deduction

therefor and for the amount of deduction to be made for temperature, leakage, and evaporation. (Id.)

Art. 6042. Powers not limited.

Particular powers herein granted to the commission shall not be construed to limit the general powers conferred by law, and until set aside or vacated by some order or decree of a court of competent jurisdiction, all orders of the commission as to any matter within its jurisdiction shall be accepted as prima facie evidence of their validity. (Id.)

Art. 6043. Publication of tariffs.

Such common carriers of crude petroleum shall make and publish their tariffs under such rules and regulations as the commission may prescribe, and the commission shall require them to make reports, and may investigate their books and records kept in connection with such business. (Id.)

Art. 6044. Monthly reports.

The commission shall require of such common-carrier pipe lines duly verified monthly reports of the total quantities of crude petroleum owned by such pipe lines and of that held by them in storage for others, as also of their unfilled storage capacity, but no publicity shall be given by the commission as to stock of crude petroleum on hand of any particular pipe line; but the commission in its discretion may make public the aggregate amounts held by all pipe lines making such reports and of their aggregate storage capacity. (Id.)

Art. 6045. Discrimination prohibited.

No such common carrier in its operations as such shall discriminate between or against shippers in regard to facilities furnished or service rendered or rates charged under the same or similar circumstances in the transportation of crude petroleum; nor shall there be any discrimination in the transportation of crude petroleum produced or purchased by itself directly or indirectly. In this connection the pipe line shall be considered as a shipper of the crude petroleum produced or purchased by itself directly or indirectly and handled through its facilities. No such carrier in such operations shall directly or indirectly charge, demand, collect, or receive from anyone a greater or less compensation for any service rendered than from another for a like and contemporaneous service: *Provided*, This shall not limit the right of the commission to prescribe rates and regulations different from or to some places from other rates or regulations for transportation from or to other places as it may determine; nor shall any carrier be guilty of discrimination when

obeying any order of the commission. When there shall be offered for transportation more crude petroleum than can be immediately transported, the same shall be equitably apportioned. The commission may make and enforce general or specific regulations in this regard. No such common carrier shall at any time be required to receive for shipment from any person, firm, corporation, or association of persons exceeding three thousand barrels of petroleum in any one day. (Id.)

Art. 6046. Rules for prevention of waste.

The commission, when necessary, shall make and enforce rules and regulations either general in their nature or applicable to particular oil fields for the prevention of actual waste of oil or operations in the field dangerous to life or property. (Id.)

NOTE.—Cited in support of the Railroad Commission's power to impose proration under its general authority to prevent waste, prior to enactment of the proration statute (art. 6049 c). *Danciger Oil & Refining Co.* v. *Railroad Commission*, 49 S. W. (2d) 837 (Ct. Civ. App., Mar. 23, 1932).

Art. 6047. Penalty.

Any common carrier as herein defined who shall violate any provision of this law, or who shall fail to perform any duty herein imposed, or any valid order of the commission when not stayed or suspended by order of court, shall be subject to a penalty of not less than $100 nor more than $1,000 for each offense, recoverable in the name of the State. Such penalty may also be recovered by and for the use of any person, corporation, or association of persons against whom there shall have been an unlawful discrimination as herein defined; such suit to be brought in the name of and for the use of the party aggrieved. (Id.)

Art. 6048. Transportation of crude petroleum.

Subject to the provisions of the law and the rules or regulations which may be prescribed by the commission, every such common carrier shall receive and transport crude petroleum delivered to it for transportation and shall so receive and transport same and perform its other duties with respect thereto without discrimination. (Id.)

NOTE.—*Texas Pipe Line Co.* v. *Burton Drilling Co.* (Ct. Civ. App., 5th Dist., Sept. 30, 1932) was an appeal from an interlocutory mandatory injunction commanding the Texas Pipe Line Co. to desist from refusing to accept and transport the plaintiff's crude oil. The company had refused on the ground that the plaintiff had failed to present certificates, as required by the commission's special order No. 120, that the oil had been lawfully produced in accordance with orders of the commission. The complaint alleged that the plaintiff had secured a waiver of the order from the commission. On this state of the pleadings the

court held the commission's waiver deprived the company of any defense based on noncompliance with the commission's original order. The case turned on the propriety of a mandatory injunction of this character. *Held*, that the defendant had waived that objection by appealing instead of moving to vacate the order.

Art. 6049. Salary of expert and other expenses.

The salary of the expert for the commission and all other employees shall be paid out of the fund created under article 6032, by monthly warrants drawn by the comptroller on the State treasurer. All other expenses incurred in the administration and enforcement of the provisions of this subdivision shall be paid out of the same fund by like warrants issued upon duly verified statements of the persons entitled, with the approval of the chairman.

Art. 6049a. Regulating pipe lines and common purchasers of oil.

SECTION 1. [*Defining storage utilities.*] Every person, association of persons, or corporation owning, operating or managing any crude petroleum storage tanks or storage facilities for the public for hire, either in connection with a pipe line, pipe lines, or otherwise, is hereby declared to be a public utility, subject to the provisions of this law.

NOTE 1.—Art. 6049a, as numbered in Vernon's Comp. Tex. Stats., 1931, supp., embodies secs. 1–12 incl. of Acts, 1931, 42d Leg., 1st called sess., ch. 28, amending ch. 36, Acts 5th called sess., 41st Leg.

NOTE 2.—All of the provisions of article 6049 (a) relating to natural gas were held unconstitutional in *Texoma Natural Gas Co. et al.* v. *Railroad Commission*, 59 F. (2d) 750 (W. Dist. Tex., June 8, 1932).

SEC. 2. [*Preventing discrimination by storage utilities.*] No such public utility in its operations as such shall discriminate between or against its patrons in regard to facilities furnished or services rendered, or rates charged under the same similar circumstances, in the storage of crude petroleum.

NOTE.—See note under sec. 1.

SEC. 3. [*Requiring bond.*] All such public utilities as herein defined shall within thirty days after this act takes effect, or in case of persons, associations, or corporations, hereafter engaging in such business, before they actually engage therein, file a bond which shall not exceed twenty-five thousand dollars ($25,000.00), properly executed, payable to the State of Texas, the amount of such bond and the sureties thereon to be subject to the approval of the Railroad Commission of the State of Texas. The amount of such bond may be changed from time to time by order of the railroad commission, after notice and hearing as prescribed by article 6038,

Revised Civil Statutes, in accordance with the volume of business done, or to be done, by such public utility and such bond or securities in lieu thereof as provided by article 836 of the Revised Civil Statutes of Texas, shall be approved by the railroad commission before it is filed. Such bond shall be conditioned that the utility will observe the provisions of this law and the rules of the railroad commission in so far as its business is regulated and controlled by such commission, and that the utility will exercise ordinary care in the storage, preservation, handling, and delivery of all petroleum products entrusted to it and shall guarantee the classification, measurements and grades made by such public utility, under its authority in conformity herewith. The bond shall be for the benefit of the patrons of such utility and their assignees as though they were named obligees therein and they shall severally have the right of suit thereon.

NOTE.—See note under sec. 1.

SEC. 4. [*Authorizing railroad commission to establish rules and prescribed standards.*] The Railroad Commission of Texas shall establish and enforce rules and regulations governing the character of facilities to be furnished by such utilities, the forms of receipts to be issued by them, the rates, charges, and regulations for the storage of crude petroleum by such public utilities in respect to their storage facilities and for the inspection, grading, measurement, deductions for waste or deterioration, the delivery of such products, and it shall also exercise such power upon petition of any person showing a substantial interest in the subject matter thereof.

NOTE.—See note under sec. 1.

SEC. 5. [*Creating lien to secure storage charges.*] Any such public utility shall have a lien on the commodity in its possession to secure it in the payment of all proper storage charges against such commodity, and/or the transportation charges accrued to or paid or advanced by it, superior to all other liens thereon, except lien for taxes.

NOTE.—See note under sec. 1.

SEC. 6. [*Requiring reports.*] Every common carrier of crude petroleum within this State as defined by law and every public utility as defined herein shall on or before the twentieth day of each calendar month file with the Railroad Commission of Texas, and post in a conspicuous place, accessible to the general public, in each of its division offices, and in its principal office in this State a statement, duly verified, containing the following information concerning its business during the preceding calendar month:

1. How much petroleum, crude or refined, was in the actual and immediate custody of such carrier or public utility at the beginning and close of such month, and where same was located or held, including the location and designation of each tank or place of deposit, and the name of its owner.

2. How much petroleum, crude or refined, was received by such carrier or public utility during such month.

3. How much petroleum, crude or refined, was delivered by such carrier or public utility during such month.

4. What quantity of such petroleum, crude or refined, is held by it for the account of itself or parent or affiliated organizations.

5. The available empty storage owned or controlled by it and where located.

6. The foregoing information shall be set out in each statement separately as to crude petroleum and each refined product thereof.

NOTE.—See note under sec. 1.

SEC. 6A. [*Commission to fix rates and charges of and make rules to govern carriers by pipe line—Basis of rates—Reparations—Connections or lines shall not be abandoned except, etc.*] The commission shall establish and promulgate rates of charges and regulations for gathering, transporting, loading and delivering crude petroleum by such common carriers in this State, and for the use of storage facilities necessarily incident to such transportation, and prescribe and enforce rules and regulations for the government and control of such common carriers in respect to their pipe line and receiving, transferring, and loading facilities. Such rates shall include both single and joint line transportation, deductions for evaporation and shrinkage, demurrage, storage, and overage charges, and all other similar items. The basis of such rates shall be such as will provide a fair return upon the aggregate value of the property of any such carrier used and useful in the services performed after providing reasonable allowance for depreciation and other proper factors, and for reasonable operating expenses under honest, efficient, and economical management, and provided further that the commission shall have reasonable latitude in the establishment and adjustment of competitive rates.

Immediately after this act shall become effective it shall be the duty of the commission to hold hearings as to rates now charged and shall reset them on all existing and operating lines in accordance with the preceding article, taking into consideration the past earnings of such carrier.

When any carrier makes application or files tariff to establish a new rate, either for a new or old line, a temporary rate may be placed

into effect immediately upon filing said tariff with the commission. If any rates shall be filed, shippers who have paid the rates so filed by the pipe line company shall have the right to reparation or reimbursement of all excess rates or transportation charges so paid over and above the rate as finally determined on all shipments. When any person or persons at interest hereafter file an application for a change in a rate or rates the commission shall call a hearing or hearings, and shall immediately thereafter establish and promulgate a rate or rates in accordance with the basis herein set out. The commission shall, on its own motion or motion of any interested person, hold a hearing or hearings when it has reason to believe that any rate or rates do not conform to the basis herein set out, said hearings or hearing to be for the purpose of adjusting, establishing, and promulgating a proper rate or rates, and said commission shall hold a general hearing once each year for the purpose of adjusting all rates to conform to the basis of rates and charges as herein set out. Article 6037, Revised Civil Statutes, is hereby repealed.

No common carriers by pipe line within this State shall hereafter abandon any of its connections or lines except under authority of a permit granted by the railroad commission, or with written consent of the owner or duly authorized agent of the wells to which connections are made. Before granting any such permit the railroad commission shall issue notice and have a hearing as now provided for in section 6038 of the Revised Civil Statutes of Texas for 1925.

NOTE.—See note under sec. 1.

SEC. 7. [*Extension or enlargement of facilities of storage utilities and carriers by pipe line.*] The Railroad Commission of Texas may, after hearing in a proceeding upon complaint by a party at interest, or upon its own initiative without complaint, and after notice and hearing as provided by article 6038, Revised Civil Statutes of Texas, 1925, authorize or require by order any person, association of persons, or corporation owning or operating pipe lines in the State of Texas, which is a common carrier as defined by law, or owning, operating, or managing any crude petroleum storage tanks, or crude petroleum facilities for the public for hire, to extend or enlarge such pipe lines, or storage facilities, provided such extension or enlargement shall be found to be reasonable and required in the public interest and that the expense involved will not impair the ability of such common carrier or public utility to perform its duty to the public.

NOTE.—See note under sec. 1.

SEC. 8. [*Defining common purchasers of crude oil and preventing discrimination in purchases.*] Every person, association of persons, or corporation who purchases crude oil or petroleum in this State

which is affiliated through stock-ownership, common control, contract, or otherwise with a common carrier by pipe line, as defined by law, or is itself such common carrier, shall be a common purchaser of such crude petroleum and shall purchase oil offered it for purchase without discrimination in favor of one producer or person as against another in the same field, and without unjust or unreasonable discrimination as between fields in this State; the question of justice or reasonableness to be determined by the railroad commission, taking into consideration the production and age of wells in respective fields and all other proper factors. It shall be unlawful for any such common purchaser to discriminate between or against crude oil or petroleum of a similar kind or quality in favor of its own production, or production in which it may be directly or indirectly interested, either in whole or in part, but for the purpose of prorating the purchase of crude oil or petroleum to be marketed, such production shall be taken in like manner as that of any other person or producer and shall be taken in the ratable proportion that such production bears to the total production offered for market in such field. The Railroad Commission of Texas shall have authority, however, to relieve any such common purchaser, after due notice and hearing as hereinafter provided, from the duty of purchasing petroleum of inferior quality or grade.

NOTE.—See note under sec. 1.

SEC. 8A. [*Creating common purchasers of natural gas and preventing discrimination in purchases.*] That in order to further conserve the natural gas resources of this State every person, association of persons, joint stock company, limited copartnership, partnership, corporation, gas pipe line company, or gas purchaser now, or hereafter, claiming or exercising the right to carry or transport natural gas by pipe line, or pipe lines, for hire, compensation, or otherwise within the limits of this State, or which is now engaged or shall hereafter engage in the business of purchasing, or taking natural gas, or residue gas or casing-head gas shall be a common purchaser thereof, and shall purchase, or take such gas under such rules or regulations as may be prescribed by the commission, in the same manner, under the same inhibitions against discriminations and subject to the same provisions as are herein set out with respect to common purchasers of oil.

NOTE.—See note under sec. 1.

SEC. 8AA. [*Further defining common purchasers of oil and gas.*] In addition to persons enumerated in section 8, hereof, any and all other persons, association of persons, or corporations, operating any pipe line, which may now, or hereafter, purchase crude oil, petroleum, or natural gas in this State, whether they be common carriers or

affiliated with common carriers or not, shall be a common purchaser of such crude oil, petroleum, or natural gas, and shall purchase crude oil, petroleum, or natural gas, offered it for purchase without discrimination in favor of one producer or person as against another as provided in section 8 hereof.

NOTE.—See note under sec. 1.

SEC. 8B. [*Jurisdiction of commission.*] It shall be the duty of the Railroad Commission of Texas to see that the provisions of this act are fully complied with, and it shall have the power, after notice and hearing, to make rules, regulations, and orders, defining the distance that extensions or gathering lines shall be made to all oil or gas wells; and such other rules, regulations, or orders as may be necessary to carry out the provisions of this act, and to prevent discrimination in purchases.

NOTE.—See note under sec. 1.

SEC. 8BB. [*This act shall not impair antitrust laws.*] It is expressly provided that no provision of this act shall be construed as in anywise modifying, limiting, changing, repealing, or affecting any part of the present laws of this State defining and regulating trusts, monopolies, and conspiracies in restraint of trade; and that no provision of this act shall be construed as authorizing any agreement and/or combination of capital, skill, or acts and/or any combination or consolidation now prohibited by the antitrust laws of this State and/or the laws of this State prohibiting trusts, monopolies, and/or conspiracies in restraint of trade; and that no provision of this act is intended or shall be construed as authorizing any agreement, act, combination, consolidation, or otherwise, which is now prohibited under the antitrust laws of this State and/or the laws prohibiting and defining trusts, monopolies, and/or conspiracies in restraint of trade.

NOTE.—See note under sec. 1.

SEC. 8C. [*Crude oil shall not be transported unless produced or purchased according to rule or order of commission.*] No person, association of persons, or corporation, whether a common carrier or otherwise, shall be permitted to transport crude oil or petroleum in this State unless such crude oil or petroleum has been produced and/or purchased in accordance with the laws of the State of Texas and/or any order, rule, or regulation of the railroad commisssion made in pursuance thereof.

NOTE 1.—See note under sec. 1.
NOTE 2.—See *Texas Pipe Line Co.* v. *Burton Drilling Co.*, p. 347, supra.

SEC. 9. [*Commission further authorized to make rules and regulations.*] The Railroad Commission of Texas shall have authority to

make rules and regulations for the enforcement of the provisions of this act.

NOTE.—See note under sec. 1.

SEC. 10. [*Institution of proceedings—Notice and hearing.*] Any person, association of persons, or corporation, or the Attorney General of Texas on behalf of the State, may institute proceedings before the railroad commission, or apply for a hearing before said commission, upon any question relating to the enforcement of this act, and jurisdiction is hereby conferred upon said commission to hear and determine the same after the notice provided by article 6038, Revised Civil Statutes of Texas. The commission shall not make any order establishing, prescribing, or modifying rates, rules, or regulations, as herein provided, except upon like notice and hearing as provided in said article 6038.

NOTE.—See note under sec. 1.

SEC. 11. [*Penalty.*] For the violation of any provision of this act, or for the violation of any valid rule or regulation promulgated hereunder or any order passed by the railroad commission in pursuance of any such provision, rule, or regulation, such person, association of persons, or corporation shall be subject to a penalty of not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000.00) for each offense recoverable in the name of the State in any district court in Travis County, Texas, and each day of such violation shall constitute a separate offense. One-half of such penalty may be recovered by and for the use of any person, association of persons, or corporation against whom there shall have been an unlawful discrimination as herein defined, such suit to be brought in the name of and for the use of the party or parties aggrieved.

NOTE.—See note under sec. 1.

SEC. 11A. [*Forfeiture of charter for violation.*] For any violation of any provision of this act, or for the violation of any valid rule or regulation promulgated hereunder by the railroad commission, in pursuance of such provision, by any domestic corporation which is a common purchaser as defined herein, the attorney general may bring suit in the district court of Travis County, Texas, for the purpose of forfeiting the charter of such corporation, and enjoining and forever prohibiting such corporation from doing business in this State, and if adjudged guilty by the court before whom the action is brought, the charter of such corporation may be forfeited and the injunction may be granted, provided said forfeiture and injunction shall be in addition to all other penalties.

NOTE.—See note under sec. 1.

SEC. 11B. [*Cancelling permit of foreign corporation for violations.*] For any violation of any provision of this act, or for the violation of any valid rule or regulation promulgated hereunder by the railroad commission in pursuance of such provision, by any foreign corporation, which is a common purchaser as defined herein, the attorney general may bring suit in the district court of Travis County for the purpose of cancelling the permit of such corporation and of enjoining and forever prohibiting such corporation from doing business in this State, and if adjudged guilty by the court before whom the action is brought, the permit may be cancelled and the injunction may be granted, provided said cancellation and injunction shall be in addition to all other penalties.

NOTE.—See note under sec. 1.

SEC 11C. [*Parties injured by discrimination of common purchasers may sue.*] When any person, persons, association, or corporation is discriminated against by a common purchaser as defined herein in favor of the production of said common purchaser, a cause of action for damages, when such has occurred, shall lie against said common purchaser and said person, persons, association, or corporation may bring suit for same in any court of competent jurisdiction in the county in which the damage occurred.

NOTE.—See note under sec. 1.

SEC. 11D. [*Commission may prevent and remove discrimination in making connections and extensions by pipe line.*] The railroad commission shall make inquiry in each field concerning the connections of the various producers and when discrimination is found to be practiced by any common purchaser as defined in this act the said railroad commission shall issue an order to such common purchaser to make such reasonable extensions of their lines and such reasonable connections as will prevent such discrimination.

NOTE.—See note under sec. 1.

SEC. 11E. [*Mandatory injunction to compel reasonable extensions to prevent discrimination.*] The railroad commission shall, upon information that discrimination is practiced in its purchases by any common purchaser, request the attorney general to bring a mandatory injunction suit against said common purchaser to compel such reasonable extensions as are necessary to prevent discrimination.

NOTE.—See note under sec. 1.

SEC. 11F. [*Receivership for property involved in violation of order declared valid by court—Bond when injunction is dissolved.*] Whenever any order, rule, or regulation promulgated by the commission pursuant to this act has been finally adjudged to be valid, in whole or in part, in any suit to which the commission is a party, and

thereafter any party to the suit or other proceedings in which such matter has been so adjudged, shall violate such rule, regulation, order, or judgment, or shall suffer any property owned or controlled by him to be used in violation of any such rule, regulation, order, or judgment, the commission shall have the power, and it shall be its duty to make application to the judge of the trial court, setting out such rules, regulation, order, or judgment and that such party, subsequent to the date of such judgment has violated or is violating such rule, regulation, order, or judgment, and praying that a receiver be appointed as provided in this section. Thereupon the judge of such trial court may after notice and hearing, appoint a receiver of the property involved or used in violating such rule, regulation, order, or judgment, and shall fix a proper bond for such receiver. As soon as such receiver has qualified, he shall take possession of such property, and such receiver thereafter shall perform his duties as receiver of such property under the orders of said court, strictly observing such rule, regulation, order, or judgment. Any party whose property has been so placed in the hands of a receiver may move to dissolve such receivership and discharge the receiver only upon showing that such party has not willfully violated nor suffered property owned or controlled by him to be used in violating such rule, regulation, order, or judgment or upon other good cause shown. In its discretion such court may, before dissolving such receivership or discharging such receiver, require the party applying for such dissolution or discharge to give bond with good and sufficient sureties in an amount to be fixed by the court, sufficient reasonably to indemnify all persons who may suffer damage by reason of the violation of the rule, regulation, or order so adjudged to be valid. In determining the amount of such bond, the judge shall take into consideration all of the facts and circumstances surrounding the parties which he may deem necessary to determine the reasonableness of the amount of such bond and any bond so executed, if made by any bonding or surety company, shall be by some company authorized to do business in Texas. Such bond shall be made payable to, and be approved by, the judge of said court and shall be for the use and benefit of, and may be sued on, by all persons who may suffer damage by reason of any further violation by the party giving the bond of the rule, regulation, or order so adjudged to be valid, and who may bring suit thereon. From time to time on motion the court may increase or decrease the amount of such bond, and may require new or additional sureties as the facts may warrant or justify.

NOTE.—See note under sec. 1.

SEC. 11G. [*Purchase of and payment for royalty oil.*] Any common purchaser of oil or gas herein defined shall, in making purchases of royalty oil, comply with all the provisions of this act, and shall not discriminate between royalty and/or land owners in making such purchases. Neither shall said common purchaser unreasonably delay payments to said land and/or royalty owner for said oil or gas purchased. For violation whereof in addition to the other penalties herein set out, the land and royalty owner or owners damaged thereby shall have a cause of action against said common purchaser for damages and may file suit for same in any court of competent jurisdiction in the county where the royalty lies.

NOTE.—See note under sec. 1.

SEC. 11H. [*Enforcement—Provision same as in title 102.*] All the provision of Title 102 of the Revised Civil Statutes as amended shall apply in the enforcement of this act.

NOTE.—See note under sec. 1.

SEC. 11I. [*Appropriation to enforce act.*] There is hereby appropriated to the Railroad Commission of Texas for its use in complying with this act an additional sum of fifty thousand dollars ($50,000.00), or so much thereof as may be necessary, out of the money raised each year from the tax collected by virtue of Article 6032 Revised Civil Statutes of 1925, and if the money so raised by said tax is insufficient to pay this appropriation therefrom, then the balance of this appropriation shall be paid out of the general revenue not otherwise appropriated.

NOTE.—See note under sec. 1.

SEC. 11J. [*Act not to be construed as authorizing commission to limit, adjust or fix the amount of production of any field or area.*]

NOTE.—Repealed by S. B. 1, Nov. 12, 1932.

SEC. 12. [*Appeal—Proceedings.*] Any person or party at interest, aggrieved by any order of the Railroad Commission of Texas under this act, may have such order reviewed by proceedings in the manner prescribed by Article 6453, Revised Civil Statutes of Texas. The proceedings upon appeal shall be in like manner as prescribed by Article 6453.

NOTE.—Art. 6049a, as numbered in Vernon's Comp. Tex. Stats., 1931 supp., embodies secs. 1–12 incl. of Acts 1931, 42d Leg., 1st called sess., ch. 28, amending ch. 36, Acts 5th called sess., 41st Leg.

SEC. 13. *Saving clause;* SEC. 14, *Act cumulative of existing laws;* and SEC. 15, *Emergency clause*, are omitted in Vernon and here.

Art. 6049b. Marginal wells defined; curtailing production.

SEC. 1. The term "marginal well" as used herein means a pumping oil well producing such daily quantities of oil as herein set out

as would be damaged, or result in a loss of the production ultimately recoverable, or cause the premature abandonment of same, if its daily production were artificially curtailed. The following described wells shall be deemed "marginal wells" in this State:

(A) Any pumping oil well within this State having a daily production of ten barrels or less, averaged over the preceding thirty consecutive days, producing from a depth of 2,000 feet or less;

(B) Any pumping oil well within this State having a daily production of twenty barrels or less, averaged over the preceding thirty consecutive days, producing from a horizon deeper than 2,000 feet and less in depth than 3,500 feet;

(C) Any pumping oil well in this State having a daily production of forty barrels or less, averaged over the preceding thirty consecutive days, producing from a horizon deeper than 3,500 feet.

SEC. 2. To artificially curtail the production of any "marginal well" below the marginal limit as set out above prior to its ultimate plugging and abandonment is hereby declared to be waste, and no rule or order of the Railroad Commission of Texas, or other constituted legal authority, shall be entered requiring restriction of the production of any "marginal well" as herein defined. (Acts 1931, 42d Leg., ch. 58.)

Art. 6049c.

NOTE.—Art. 6049c, as numbered in Vernon's 1931 Supp., embodies the Act of Aug. 12, 1931 (Acts 1931, 42d Leg., 1st called sess., ch. 26, secs. 4–14, 16–21, 23), Secs. 1–3, 15, 22 amended arts. 6014, 6008, 6036, 6029, 6032, respectively. Sec. 24 (emergency clause) omitted.

SEC. 4. Whenever it shall appear that any party engaged in the production, storage, or transportation of crude petroleum oil or natural gas in violation of any statute of this State or any valid rule, regulation, or order of the commission promulgated to correct, prevent, or lessen the waste of crude petroleum oil or natural gas, the commission, through the attorney general may bring suit against such party in any court of competent jurisdiction in Travis County, Texas, or in the county of the residence of the defendants, or any of them, or in the county in which such violation is alleged to have occurred, but not elsewhere, to restrain such party from violating such rule, regulation, or order, or any part thereof, and in such suit the commission may obtain such preliminary restraining order or temporary or final injunction as the facts may warrant.

NOTE 1.—*Constantin et al.* v. *Smith*, 57 F. (2d) 227 (E. Dist. Tex., Feb. 18, 1932), enjoined military officers from interfering with production, but on condition that the plaintiffs abide by the Railroad Commission's production orders pending further hearing. Affirmed, *Sterling* v. *Constantin*, U. S. Sup. Ct., Dec. 12, 1932.

NOTE 2.—*People's Petroleum Producers', Inc.*, v. *Sterling et al.*, 60 F. (2d) 1041 (E. Dist. Tex., July 23, 1932), refused a temporary injunction against enforcement of the Railroad Commission's proration orders, holding them to have been supported by adequate evidence of physical waste. The 1931 amendments to this article had intervened between this decision and the prior case of *MacMillan* v. *Railroad Commission*, 51 F. (2d) 400 (W. Dist. Tex., July 28, 1931). But on final hearing of the People's Petroleum case, while the validity of the statutes was sustained, the Commission's orders were held invalid, *People's Petroleum Producers', Inc.*, v. *Smith*, 1 Fed. Supp. 361.

SEC. 5. The commission shall have power, and it shall be its duty, from time to time, to inquire into the production, storage, or transportation of crude petroleum oil, and of natural gas, and the market demand therefor, all in order to determine whether or not waste exists or is imminent. The commission shall have the right to require any party to make and file with the commission sworn statements as to facts within the knowledge or possession of such party pertaining to the production, storage, or transportation of crude petroleum oil or of natural gas, and to the market demands therefor, as often and for such periods as the commission may specify, and may require any well or wells under the control of any party, whenever and as often, and for such periods as the commission may specify, to be inspected or gauged and the books and records of any party to be examined.

(As amended by S. B. 1, November 12, 1932.)

SEC. 6. It shall be the duty of all parties producing, storing or transporting crude petroleum oil or natural gas within this State, to make and to keep in this State a permanent record or copies of records of the quantity or amount of all such oil or gas so produced, stored or transported within this State. The commission or its duly authorized agents, and the attorney general or his assistants or agents, shall have the right to inspect said records as often and for such periods as they may deem necessary. The failure of any corporation chartered under the laws of this State to comply with the provisions of this section and to keep such records in this State, or the refusal to permit the officers herein mentioned to inspect and examine the records herein required, shall constitute grounds for a forfeiture of its charter rights and privileges and the dissolution of its corporate existence. Such violations by a foreign corporation shall be grounds for enjoining and forever prohibiting such corporation from doing business in this State. It shall be the duty of the attorney general, when in his judgment the public interest requires it, upon his motion, and without leave or order of any judge or court, to institute suit or other appropriate action in Travis County, for forfeiture of charter rights of domestic corporation and enjoining foreign corporations from doing business in this State, when any such corporation is deemed guilty of violating the provisions of this section.

SEC. 7. Upon the initiative of the commission, or upon the verified complaint of any party producing, storing, or transporting crude petroleum oil or natural gas in this State that waste of crude petroleum oil or natural gas is taking place in this State, or is reasonably imminent, the commission may hold a hearing, at such time and place as it may fix, to determine whether or not waste is taking place, or is reasonably imminent, and what, if any, rule, regulation, or order should be made or what, if any, other action should be taken to correct, prevent, or lessen such waste. Notice of such hearing shall be given by the commission, as provided by law. At said hearing all parties interested shall be entitled to be heard and introduce evidence and to require the attendance of witnesses and the production of evidence may be required as provided by law. If upon the hearing the commission shall find that waste is taking place, or is reasonably imminent, the commission shall make such rule, regulation, or order as in its judgment is reasonably required to correct, prevent, or lessen such waste.

In the event any such rule, regulation, or order which the commission may adopt provides for the limitation or fixing of the production of crude petroleum oil, or of natural gas from wells producing gas only, in any common pool or portion thereof, the commission shall distribute, prorate, or otherwise apportion or allocate the allowable production among the various producers on a reasonable basis.

From and after the promulgation of any rule, regulation, or order of the commission it shall be the duty of each party affected thereby to comply with the same. The commission may, without notice, revoke any such rule, regulation, or order; and it may, without notice, amend the same, provided the subject matter of the amendment was considered at the hearing made the basis for such rule, regulation, or order. The renewal or extension of any rule, regulation, or order shall be based upon a hearing after proper notice.

(As amended by S. B. 1, November 12, 1932.)

SEC. 8. Any interested party affected by the conservation laws of this State relating to crude petroleum oil or natural gas, and the waste thereof, including this act, or by any rule, regulation, or order made or promulgated by the commission thereunder, and who may be dissatisfied therewith, shall have the right to file a suit in a court of competent jurisdiction in Travis County, Texas, and not elsewhere, against the commission, as defendant, to test the validity of said laws, rules, regulations, or orders. Such suit shall be advanced for trial and be determined as expeditiously as possible, and no postponement thereof or continuance shall be granted except for reasons deemed imperative by the court. In all trials under this section the burden of proof shall be upon the party complaining of such laws, rule, regulation, or order, and such laws, rule, regulation, or order so complained of shall be deemed prima facie valid until otherwise shown.

(As amended by S. B. 1, November 12, 1932.)

SEC. 9. Repealed by S. B. 1, November 12, 1932.

SEC. 10. No injunction shall be granted against the railroad commission to restrain it from enforcing rules, regulations, and orders made and promulgated by the commission under the terms of this act or of any conservation statutes of this State relating to oil or gas except after notice to the commission and a hearing. *Provided, however*, That before any injunction or restraining order shall become effective the plaintiff shall be required by the court to execute a bond with good and sufficient sureties in an amount to be fixed by the court reasonably sufficient to indemnify all persons whom the court may find from the facts proven, will suffer damages by reason of the violation of the rule, regulation, or order complained of, such persons to be named in the order of the judge when the amount of the bond is fixed by the court and entered of record; provided that the finding of the court that any party is likely to suffer damage shall not be admissible as evidence of damages in any suit on such bond. In determining the amount of such bond it shall be the duty of the judge to take into consideration all of the facts and circumstances surrounding the parties and the ability of the plaintiff to make such bond in order to determine the amount and the reasonableness thereof under the facts and circumstances. Any bond made or executed by any bonding or surety company shall be by some company authorized to do business in Texas. Such bond shall be made payable to and approved by the judge of said court and shall be for the use and benefit and may be sued on by all persons named in said order who may suffer damages by reason of the violation of such rule, regulation, or order and shall bring suit thereon before the expiration of six months from the date of the final determination of the validity in whole or in part of such rule, regulation, or order: *Provided further*, That any person believing himself to be entitled to protection under said bond shall have the right, within the discretion of the court, to intervene in said suit before said bond is fixed and to make proof of his damages which might result from a violation of such rule, regulation, or order. Upon motion and for good cause shown the court may from time to time increase or decrease the amount of such bond after notice to the parties and may require new or additional sureties as the facts may justify.

SEC. 11. Either party to said suit has the right of appeal from the final judgment therein and said appeal shall at once be returnable to the appellate court and said action so appealed shall have pre-

cedence in said appellate court over all cases, proceedings and causes of a different character herein pending. In the court of civil appeals such court shall immediately and at as early a date as possible decide the questions involved therein; and in the event any question or questions shall be certified to the supreme court, or writ of error thereto be requested or granted, it is here made the duty of the supreme court to immediately set down said cause for hearing and decide the cause at as early a date as possible, and such cause shall have precedence over all other cases, proceedings, and causes of a different character in such court. All laws and parts of laws in conflict with the provisions of this section are hereby repealed.

SEC. 12. Whenever any order, rule, or regulation promulgated by the commission has been finally adjudged to be valid, in whole or in part, in any suit to which the commission is a party, and thereafter any party to the suit or other proceedings in which such matter has been so adjudged, shall violate such rule, regulation, order, or judgment, or shall thereafter suffer any property owned or controlled by him to be used in violation of any such rule, regulation, order, or judgment, the commission shall have the power, and it shall be its duty to make application to the judge of the trial court, setting out such rule, regulation, order, or judgment and that such party, subsequent to the date of such judgment, has violated or is violating such rule, regulation, order, or judgment, and praying that a receiver be appointed as provided in this section. Thereupon, the judge of such trial court may, after notice and hearing, appoint a receiver of the property involved or used in violation of such rule, regulation, order, or judgment, and shall fix a proper bond for such receiver. As soon as such receiver has qualified, he shall take possession of such property, and such receiver thereafter shall perform his duties as receiver of such property under the orders of said court, strictly observing such rule, regulation, order, or judgment. Any party whose property has been so placed in the hands of a receiver may move to dissolve such receivership and to discharge the receiver upon such terms as the court may prescribe.

SEC. 13. Nothing herein contained or authorized, and no suit by or against the commission, and no penalties imposed upon or claimed against any party violating any statute of this State, or any rule, regulation, or order of the commission, shall impair or abridge or delay any cause of action for damages, or other relief, any owner of any land or any producer of crude petroleum oil or natural gas, or any other party at interest, may have or assert against any party violating any rule, regulation, or order of the commission, or any judgment herein mentioned. Any party owning any interest in any property or production which may be damaged by any other party

violating this act or any other statute of this state prohibiting waste or violating any valid rule, regulation or order of the commission, many sue for and recover such damages, and have such other relief as he may be entitled to in law or in equity.

SEC. 14. The purchase, transportation, or handling of crude petroleum oil or natural gas produced from any property in excess of the amount allowed by any statute or any rule, regulation, or order of the commission is hereby prohibited, and the commission shall have power to enjoin any violation of this section.

Texas Pipe Line Co. v. *Burton Drilling Co.* (Ct. Civ. App., Dallas, Sept. 24, 1932; No. 11371). Plaintiff secured ex parte and without notice an interlocutory and mandatory injunction commanding the Texas Pipe Line Co. to desist from refusing to accept and transport plaintiff's crude oil as a common carrier. The Texas Co. refused, relying on the railroad commission's special order No. 120, requiring the shipper to furnish an affidavit that the oil had been lawfully produced. After such refusal the commission, on the plaintiff's request, had granted a waiver of compliance with the order. The company, nevertheless, refused to accept the oil, and upon issuance of this injunction, appealed. Held, that on appeal the allegations of the complaint must be regarded as true, and that the waiver by the commission of its order eliminated the defences based on it; and that a mandatory injunction was a proper remedy.

SEC. 15. Omitted; amends art. 6029, q. v.

SEC. 16. Nothing in this act contained shall be construed to relieve any party from the duties and obligations imposed by chapter 36, page 17, of the acts of the forty-first legislature at its fifth called session, commonly known as the common purchaser act and all amendments thereto, nor to modify or change any provisions of said acts. Nothing in this act contained shall modify or change in any way the terms and provisions of Senate Bill No. 337, passed by the forty-second legislature at its regular session, commonly known as the marginal well bill. This act shall not repeal any existing law except where it supersedes such existing law or is in conflict therewith.

SEC. 17. This act shall be cumulative of all laws of the State of Texas not inconsistent herewith, relative to crude petroleum oil and natural gas.

SEC. 18. All persons entrusted with the enforcement of the orders, rules, and regulations of the commission shall be regular employees of the State of Texas and paid by the State of Texas, and no persons other than the regular employees of the State of Texas shall be charged with or relied upon for the performance of any such duties.

SEC. 19. If any of the sections, clauses, or any provisions of this act or of any other act referred to by this act shall be held unconstitutional, or otherwise invalid or unenforceable, such holding shall

not have the effect of nullifying or in any wise affecting the remainder of this act, and the parts of this act not so held to be unconstitutional or invalid shall remain in full force and effect.

SEC. 20. The term "party" as used in this act shall include all persons, firms, associations, corporations, trustees, and receivers. The term "commission" shall mean the Railroad Commission of Texas.

SEC. 21. This act shall not amend, repeal, change, alter, or affect in any manner the antitrust laws of this State.

SEC. 22. Omitted; amends art. 6032, q. v.

SEC. 23. The commission is hereby authorized and directed to employ such supervisors, deputy supervisors and umpires as may be necessary to carry out the provisions of this act and all related laws and orders, rules and regulations of such commission made thereunder, and it shall likewise employ such other assistants and clerical help as may be necessary from time to time for the same purpose, and there is hereby expressly appropriated out of the funds derived from the tax levied in this act, a sufficient amount to pay such salaries and expenses. The salaries of such employees shall be fixed by the railroad commission until provided for by the next session of the legislature, such salaries to be reasonable and not to exceed salaries now being paid for similar service.

SEC. 24. Omitted; declaration of emergency.

NOTE.—Art. 6049c, as numbered by Vernon's Comp. Tex. Stats., 1931 supp., embodies the act of Aug. 12, 1931 (Acts 1931, 42d Leg., 1st called sess., ch. 26, secs. 4–14, 16–21, 23). Sec. 1 amended art. 6014; sec. 2 amended art. 6008; sec. 3 amended art. 6036; sec. 15 amended art. 6029; sec. 22 amended art. 6032; sec. 24 (emergency clause) omitted.

NATURAL GAS

VERNON COMP. TEX. STATS. 1928

ARTS. 6050–6066, INCLUSIVE

Art. 6050. Classification.

The term "gas utility" and "public utility" or "utility," as used in this subdivision, means and includes persons, companies, and private corporations, their lessees, trustees, and receivers, owning, managing, operating, leasing, or controlling within this State any wells, pipe lines, plant, property, equipment, facility, franchise, license, or permit for either one or more of the following kinds of business:

1. Producing or obtaining, transporting, conveying, distributing, or delivering natural gas: (A) For public use or service for compensation; (B) for sale to municipalities or persons or companies, in those cases referred to in paragraph 3 hereof, engaged in distributing or selling natural gas to the public; (C) for sale or delivery of natural gas to any person or firm or corporation operating under franchise or a contract with any municipality or other legal subdivision of this State; or, (D) for sale or delivery of natural gas to the public for domestic or other use.

2. Owning or operating or managing a pipe line for the transportation or carriage of natural gas, whether for public hire or not, if any part of the right of way for said line has been acquired, or may hereafter be acquired, by the exercise of the right of eminent domain; or if said line or any part thereof is laid upon, over, or under any public road or highway of this State, or street or alley of any municipality, or the right of way of any railroad or other public utility; including also any natural gas utility authorized by law to exercise the right of eminent domain.

3. Producing or purchasing natural gas and transporting or causing the same to be transported by pipe lines to or near the limits of any municipality in which said gas is received and distributed or sold to the public by another public utility or by said municipality, in all cases where such business is in fact the only or practically exclusive agency of supply of natural gas to such utility or municipality, is hereby declared to be virtual monopoly and a business and calling affected with a public interest, and the said business and property employed therein within this State shall be subject to the provisions of this law and to the jurisdiction and regulation of the commission as a gas utility.

Every such gas utility is hereby declared to be affected with a public interest and subject to the jurisdiction, control, and regulation of the commission as provided herein. (Acts 3d called sess., 1920, p. 18.)

Art. 6051. May enjoin gas pipe line.

The operation of gas pipe lines for buying, selling, transporting, producing, or otherwise dealing in natural gas is a business which in its nature and according to the established method of conducting the business is a monopoly and shall not be conducted unless such gas pipe line so used in connection with such business be subject to the jurisdiction herein conferred upon the commission. The attorney general shall enforce this provision by injunction or other remedy. (Id.)

Art. 6052. Utility office.

Every gas utility as defined herein shall have an office in one of the counties of this State in which its property or some part thereof

is located and shall keep in said office all books, accounts, papers, records, vouchers, and receipts which the commission shall require. No books, accounts, papers, records, receipts, vouchers, or other data required by the commission to be so kept shall be at any time removed from this State except upon such conditions as the commission may prescribe. (Id.)

Art. 6053. Regulation of utilities.

The commission, after due notice, shall fix and establish and enforce the adequate and reasonable price of gas and fair and reasonable rates of charges and regulations for transporting, producing, distributing, buying, selling, and delivering gas by such pipe lines in this State; and shall establish fair and equitable rules and regulations for the full control and supervision of said gas pipe lines and all their holdings pertaining to the gas business in all their relations to the public, as the commission may from time to time deem proper; and establish a fair and equitable division of the proceeds of the sale of gas between the companies transporting or producing the gas and the companies distributing or selling it; and prescribe and enforce rules and regulations for the government and control of such pipe lines in respect to their gas pipe lines and producing, receiving, transporting, and distributing facilities; and regulate and apportion the supply of gas between towns, cities, and corporations, and when the supply of gas controlled by any gas pipe line shall be inadequate, the commission shall prescribe fair and reasonable rules and regulations requiring such gas pipe lines to augment their supply of gas, when in the judgment of the commission it is practicable to do so; and it shall exercise its power, whether upon its own motion or upon petition by any person, corporation, municipal corporation, county, or commissioner's precinct showing a substantial interest in the subject, or upon petition of the attorney general, or of any county or district attorney in any county wherein such business or any part thereof may be carried on. (Id.)

Art. 6054. Orders, etc., reviewed.

All orders and agreements of any company or corporation, or any person or persons controlling such pipe lines establishing and prescribing prices, rates, rules and regulations, and conditions of service, shall be subject to review, revision, and regulation by the commission on hearing after notice as provided for herein to the person, firm, corporation, partnership, or joint-stock association owning or controlling or operating the gas pipe line affected. (Id.)

Art. 6055. To refund excess charges.

If any rate or charge for gas or for service or for meter rental or any other purpose pertaining to the operation of said business shall be made or promulgated by any person, firm, or corporation owning or operating any gas pipe line, or in the event of an inadequate supply of gas or inadequate service in any respect, and complaint against same shall be filed by any person authorized by the preceding article to file such petition and such complaint is sustained in whole or in part, all persons and customers of said gas pipe line shall have the right to reparation or reimbursement of all excess in charges so paid over and above the proper rate or charge as finally determined by the commission from and after the date of the filing of such complaint. (Id.)

Art. 6056. Operator's reports.

The commission may require of all persons or corporations operating, owning, or controlling such gas-pipe lines sworn reports of the total quantities of gas distributed by such pipe lines and of that held by them in storage, and also of their source of supply, the number of wells from which they draw their supply, the amount of pressure maintained, and the amount and character and description of the equipment employed, and such other matters pertaining to the business as the commission may deem pertinent. (Id.)

Art. 6057. Discrimination.

No such pipe line public utility shall discriminate in favor of or against any persons, place, or corporation, either in apportioning the supply of natural gas or in its charges therefor; nor shall any such utility directly or indirectly charge, demand, collect, or receive from anyone a greater or less compensation for any service rendered than from another for a like and contemporaneous service, provided this shall not limit the right of the commission to prescribe different rates and regulations for the use of natural gas for manufacturing and similar purposes, or to prescribe rates and regulations for service from or to other or different places, as it may determine. (Id.)

Art. 6058. Appeal from city control.

When a city government has ordered any existing rate reduced, the gas utility affected by such order may appeal to the commission by filing with it, on such terms and conditions as the commission may direct, a petition and bond to review the decision, regulation, ordinance, or order of the city, town, or municipality. Upon such

appeal being taken the commission shall set a hearing, and may make such order or decision in regard to the matter involved therein as it may deem just and reasonable. The commission shall hear such appeal de novo. Whenever any local distributing company or concern whose rates have been fixed by any municipal government desires a change of any of its rates, rentals, or charges, it shall make its application to the municipal government where such utility is located, and such municipal government shall determine said application within 60 days after presentation unless the determination thereof may be longer deferred by agreement. If the municipal government should reject such application or fail or refuse to act on it within said 60 days, then the utility may appeal to the commission as herein provided. But said commission shall determine the matters involved in any such appeal within 60 days after the filing by such utility of such appeal with said commission or such further time as such utility shall in writing agree to, but the rates fixed by such municipal government shall remain in full force and effect until ordered changed by the commission. (Id.)

Art. 6059. Appeal from orders.

If any gas utility or other party at interest be dissatisfied with the decision of any rate, classification, rule, charge, order, act, or regulation adopted by the commission, such dissatisfied utility or party may file a petition setting forth the particular cause of objection thereto in a court of competent jurisdiction in Travis County against the commission as defendant. Said action shall have precedence over all other causes on the docket of a different nature and shall be tried and determined as other civil causes in said court. Either party to said action may have the right of appeal; and said appeal shall be at once returnable to the appellate court, and said action so appealed shall have precedence in said appellate court of all causes of a different character therein pending. If the court be in session at the time such right of action accrues, the suit may be filed during such term and stand ready for trial after 10 days' notice. In all trials under this article the burden of proof shall rest upon the plaintiff, who must show by clear and satisfactory evidence that the rates, regulations, orders, classifications, acts, or charges complained of are unreasonable and unjust to it or them. (Id.)

Art. 6060. Utility tax.

(Repealed in part; see note below.) Every gas utility subject to the provisions of this subdivision on or before the 1st day of January and quarterly thereafter shall file with the commission a statement, duly verified as true and correct by the president, treasurer, or general manager if a company or corporation, or by the owner or one of them if an individual or copartnership, showing the gross receipts of such utility for the quarter next preceding or for such portion of said quarterly period as such utility may have been conducting any business, and at such time shall pay into the State treasury at Austin a sum equal to one-fourth of 1 per cent of the gross income received from all business done by it within this State during said quarter. (Id.)

NOTE.—Acts 42d Leg. ch. 73, sec. 10 provided: "That article 6060 of the Revised Civil Statutes of 1925, except in so far as it imposes a license fee or tax of one-fourth of one per cent against persons owning, operating, or managing pipe lines, as provided in sec. 2 of article 6050, is hereby repealed and said fund shall be used for enforcing the provisions of articles 6050 to 6066, inclusive."

Art. 6061. Report to governor.

The commission shall on December 1 of each year make a full detailed report to the governor, who shall transmit the same to the next succeeding session of the legislature, showing:

1. The proceedings of said commission to such time with respect to the gas utilities defined herein.

2. The receipts of gross income taxes from all sources, indicating the sources.

3. The expenditures made under and in accordance with this subdivision, the nature of such expenditures, including, in addition to other items of expenditures, the names, titles, nature of employment, salaries of and payments made to all persons employed for any purpose under the terms of this subdivision, with statement of traveling and other expenses incurred by each of said persons and approved by the commission. (Id.)

Art. 6062. Penalties.

Any public utility as herein defined violating any provision of this subdivision or failing to perform any duty herein imposed or to comply with any valid order of the commission when not stayed or suspended by order of the court shall be subject to a penalty payable to the State of not less than $100 nor more than $1,000 for each offense, each violation to constitute a separate offense, and each day that such failure continues shall constitute a separate offense. An additional penalty of a like amount, together with reasonable attorney's fees, may also be recoverable by and for the use of any person, corporation, or association of persons against whom there shall have been unlawful discrimination as herein defined; such suit to be brought in the name of and for the use of the party aggrieved. (Id.)

Art. 6063. Receiver.

Whenever any person, firm, or corporation, owning, operating, or controlling such gas pipe line shall violate any provision hereof or any rule or regulation of the commission, the commission shall, whenever in its judgment the public interests require it, apply to any court of this State having jurisdiction for a receivership of such concern guilty of such violation. Such receiver shall control and manage the property of such gas pipe line under the direction of the court as provided by law in receivership matters. The grounds for appointment of receiver provided for in this article shall be in addition to other grounds provided by law. (Id.)

Art. 6064. Duties of pipe-line expert.

The supervisor shall likewise assist the commission in the performance of its duties under this subdivision under the direction of the commission, under such rules and regulations as it may prescribe. (Id.)

Art. 6065. Employees of commission.

The commission may employ and appoint, from time to time, such experts, assistants, accountants, engineers, clerks, and other persons as it deems necessary to enable it at all times to inspect and audit all records or receipts, disbursements, vouchers, prices, pay rolls, time cards, books, and official records, to inspect all property and records of the utilities subject to the provisions hereof, and to perform such other services as may be directed by the commission or under its authority. Such persons and employees of the commission shall be paid for the service rendered such sums as the commission may fix. The number of employees and appointees employed or appointed under this subdivision and the sums of money paid to them for their services shall be subject to the approval of the board of control, and no employment or appointment hereunder shall be valid without such approval. (Id.)

Art. 6066. Expenditures limited.

Omitted; amended 1931, 42d Leg., p. 319, ch. 190, sec. 1.

SENATE CONCURRENT RESOLUTION NO. 23

LAWS 42D LEGISLATURE, REGULAR SESSION

WHEREAS the deplorable situation existing in the oil industry calls for united legislative action on the part of the various legislatures of the oil-producing States of the Union; now,

THEREFORE, BE IT RESOLVED by the Senate of Texas, the House of Representatives concurring, That a committee, entitled a "committee to study oil, gas, and minerals," be, and the same is hereby, created, consisting of twelve members, composed of the Governor of the State of Texas, the attorney general of Texas, the chairman of the railroad commission, and four members of the Senate of Texas appointed by the lieutenant governor, and five members of the House of Representatives appointed by the speaker of the House of Representatives; that this committee be, and the same is hereby, authorized to meet with similar committees from the States of Oklahoma, California, Arkansas, Louisiana, Kansas, and Wyoming at such times and at such places as the committee may desire; that the expenses of the members of said committee not to exceed $5,000 be paid out of the contingent fund of the 42d Legislature of Texas; that the legislatures of the various States affected, the chairman of the commissions of said States affecting oil, gas, and minerals, and the governors of each of said States be invited to meet with said committee in the city of Austin, Texas, at a date as early as possible, to study and consider all oil, gas, and mining laws of the various States; that said committee and the various committees from the other States shall meet and discuss the laws and regulations affecting the oil, gas, and minerals of said States, and shall recommend back to the various legislatures a uniform code affecting the oil, gas, and mining industries of said States.

Approved by the governor, March 24, 1931.

ACT OF NOV. 12, 1932

S. B. 1

AN ACT regulating crude petroleum oil and natural gas relative to the production, transportation, and storage; amending section 1 of chapter 26 of Acts of the Forty-second Legislature, First Called Session, which amended article 6014 of the Revised Civil Statutes of Texas of 1925, as amended by Acts of the Forty-first Legislature, Regular Session, chapter 313, changing the definitions of waste and prohibiting waste as defined, and eliminating the restrictions upon the power of the commission therein contained, and eliminating the last paragraph of said section, and providing that the commission is authorized to consider any or all of the definitions of waste in making rules, regulations, or orders; providing that the Railroad Commission of Texas can not regulate as waste any process of refining crude petroleum oil and can not restrict or limit drilling of wells for exploring for crude petroleum oil or natural gas or both in territory not known to produce such minerals, and can not restrict production from new field until the production aggregates 10,000 barrels per day, except to prevent waste; and providing that subdivision (k) of section 1 shall not apply to such new field until the

production is more than 10,000 barrels a day; and further providing that production of marginal wells as defined by law can not be restricted; amending section 5 of chapter 26 of Acts of the Forty-second Legislature, First Called Session, by adding to the authority and duty of the railroad commission that of inquiring into the market demand for crude petroleum oil and natural gas to determine whether waste exists or is imminent, and to require sworn statements as to the market demand for such oil and gas, and also providing for methods of securing information as to production, storage, and transportation; providing for the limitation of the production of gas, from wells producing gas only, when the full production creates waste or is in excess of the reasonable market demand, and for the distribution or apportionment of the allowable production; amending section 7 of chapter 26 of the Acts of the Forty-second Legislature, First Called Session, by eliminating certain provisions therefrom and changing others so that as amended said section provides for notice and hearings by the Railroad Commission of Texas; authorizing such commission to make rules, regulations, or orders to correct, prevent, or lessen waste; provides for the distribution of the allowable production of crude petroleum oil and natural gas; requires compliance with rules, regulations, or orders of the said commission; and provides for revocation, amendment, renewal, and extension of rules, regulations, or orders upon certain conditions; providing for prevention of discrimination as between common sources of supply of crude petroleum oil and for allocations of the allowable or reasonable market demand to prevent discrimination; providing that the railroad commission shall consider and protect the rights and interests of the purchasing and consuming public of crude oil and its products, and that if section 6–A be unconstitutional the remaining parts of this act would have been included; amending section 15 of chapter 26 of Acts of the Forty-second Legislature, First Called Session, which amended article 6029 of the Revised Civil Statutes of Texas of 1925, requiring the said commission to make and enforce rules, regulations, or orders, and to do all things necessary for the conservation of crude petroleum oil or natural gas and the prevention of waste and injury to adjoining property, and specifying certain purposes for the making of rules, regulations, or orders; amending section 8 of chapter 26 of Acts of the Forty-second Legislature, First Called Session, providing for judicial review of laws relating to conservation of crude petroleum oil or natural gas, and rules, regulations, or orders issued thereunder; fixing the jurisdiction for review in court and providing procedure therein; fixing the burden of proof and establishing prima facie validity of laws and rules, orders, and regulations of said commission; providing that if any part of this act be held unconstitutional the remaining portions shall nevertheless be valid; making this act cumulative of all laws not inconsistent herewith and not expressly repealed or amended, and defining certain terms; expressly providing that no provision of Acts of Forty-first Legislature, Fifth Called Session, chapter 36, known as the common purchaser act, as amended, is amended except section 11–J of Acts of Forty-second Legislature, First Called Session, chapter 28, which is repealed; and no provision of senate bill 337, passed by Forty-second Legislature, Regular Session, known as marginal well bill, is amended, and that antitrust and monopoly laws are not in any way changed, altered, modified, diminished, affected, or repealed or authorized to be violated, and such laws shall control over any conflicting sections or parts thereof; repealing section 9 of chapter 26 of Acts of the Forty-second Legislature, First Called Session, and section 11–J of chapter 28 of Acts of the Forty-second Legislature, First Called Session, and all other laws and parts of laws in conflict herewith; providing that the provisions of this act shall terminate September 1, 1935, and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. That section 1 of chapter 26 of Acts of the Forty-second Legislature, First Called Session, is hereby amended so that the same shall hereafter read as follows:

SECTION 1. Article 6014 of the Revised Civil Statutes of 1925, as amended by chapter 313, Acts of the Regular Session of the Forty-first Legislature, is hereby amended so that the same shall hereafter read as follows:

NOTE.—See Article 6014, supra, for the balance of this section as it appeared in S. B. 1.

SEC. 2. The Railroad Commission of Texas shall have no authority to make any rule, regulation, or order, or in any wise determine or hold, that any mode, manner, or process of refining crude petroleum oil constitutes waste.

Nothing in this act shall be construed as granting to the Railroad Commission of Texas any power or authority to restrict, or in any manner limit, the drilling of wells for the purpose of exploring for crude petroleum oil or natural gas or both in territory not known to produce either such oil or gas.

The Railroad Commission of Texas shall not restrict the production of crude petroleum oil from any new field brought into production by such exploration until such total production therefrom aggregates 10,000 barrels of crude petroleum oil per day, unless such restriction results from the enforcement of rules, regulations, or orders dealing with the method or manner of producing, storing, or transporting crude petroleum oil therefrom to prevent physical waste occurring in such new field; provided, however, the production

of any such new field shall not be limited by the application of subdivision (k) of section 1 hereof until the production of such new field is more than 10,000 barrels per day.

Nothing in section 1 hereof shall be construed to authorize the limitation of production of marginal wells, as such marginal wells are now defined by statute, below the amount fixed by statute for such wells.

SEC. 3. Section 5 of chapter 26 of Acts of the Forty-second Legislature, First Called Session, is hereby amended so that the same shall hereafter read as follows:

NOTE.—For balance of the text of this section see article 6049c, section 5, supra.

SEC. 4. Whenever the full production, from wells producing gas only, from any common source of supply of natural gas in this State is in excess of the reasonable market demand, the railroad commission shall inquire into the production and reasonable market demand therefor and shall determine the allowable production from such common source of supply, which shall be the reasonable market demand which can be produced without waste, and the commission shall allocate, distribute, or apportion the allowable production from such common source of supply among the various producers on a reasonable basis, and shall limit the production of each producer to the amount allocated or apportioned to such producer.

SEC. 5. Section 7 of chapter 26 of Acts of the Forty-second Legislature, First Called Session, is hereby amended so that the same shall hereafter read as follows:

NOTE.—For balance of the text of this section see article 6049c, section 7, supra.

SEC. 6. In order to prevent unreasonable discrimination in favor of one common source of supply of crude petroleum oil as against another, and upon written complaint and proof of such discrimination, the Railroad Commission of Texas is authorized to allocate or apportion the allowable production among the various common sources of supply of crude petroleum oil in the State; provided, however, that in allocating or ascertaining the reasonable market demand for the whole State the reasonable market demand of one common source of supply shall not be discriminated against in favor of any other common source of supply; and provided further, that the Railroad Commission of Texas shall ascertain the reasonable market demand of each such respective common source of supply as the basis for determining the allotments to be assigned each such respective common source of supply, to the end that such discrimination may be prevented.

SEC. 6–A. It is further provided that in the administration of this act the Railroad Commission of Texas shall, at all times, take into consideration and protect the rights and interests of the purchasing and consuming public of crude oil, and all of its products, such as gasoline and lubricating oil; provided, however, that if this section 6–A be held for any reason unconstitutional the remaining sections of this bill shall, nevertheless, be valid; and it is declared that such remaining portions would have been included in this act though this particular section had been omitted.

SEC. 7. Section 15 of chapter 26 of Acts of the Forty-second Legislature, First Called Session, is hereby amended so that the same shall hereafter read as follows:

SEC. 15. Article 6029 of the Revised Civil Statutes of 1925 is hereby amended so that it shall hereafter read as follows:

NOTE.—For balance of the text of this section, see Article 6029.

SEC. 8. Section 8 of Chapter 26 of Acts of the Forty-second Legislature, First Called Session, is hereby amended so that the same shall hereafter read as follows:

NOTE.—For balance of the text of this section, see Article 6049–c, section 8, supra.

SEC. 9. If any section, subdivision, paragraph, sentence, clause, or word of this act be held to be unconstitutional, the remaining portions of same shall, nevertheless, be valid; and it is declared that such remaining portions would have been included in this act though the unconstitutional portions had been omitted.

SEC. 10. This act shall be cumulative of all laws of the State of Texas, not inconsistent herewith and not hereby expressly repealed or amended, and the words "crude petroleum oil" and "natural gas" as used herein are not to be construed as referring to different substances than those referred to herein and in existing statutes by the use of the usual words "oil" and "gas." The word "commission" shall mean the Railroad Commission of Texas. The words "pool," "common pool," "field," and "common source of supply" shall mean a common reservoir.

SEC. 11. Section 9, chapter 26, of the Acts of the Forty-second Legislature, First Called Session, and also section 11–J, chapter 28, of Acts of the Forty-second Legislature, First Called Session, and all other laws and parts of laws in conflict herewith are hereby repealed.

SEC. 12. Nothing in this act shall be construed to repeal chapter thirty-six of Acts of the Forty-first Legislature, Fifth Called Session, known as the common purchaser bill, and amendments thereto, except as specifically repealed hereby or inconsistent herewith; and this act shall not be construed to repeal or modify senate bill No. 337,

passed by the Forty-second Legislature, at its regular session, known as the marginal well bill.

SEC. 13. It is especially provided that nothing herein shall in any manner affect, alter, diminish, change, or modify the antitrust and/or monopoly statutes of this State, and that no provision of this act shall in any manner directly or indirectly authorize a violation of such antitrust and/or monopoly statutes, and in this connection it is hereby declared and especially provided by the Legislature of the State of Texas enacting this legislation that notwithstanding the provisions of sections 10, 11, and 12, or any other sections of this act, it is the legislative intent that no provision of this act shall in any manner affect, alter, diminish, or amend any provision of the antitrust and/or monopoly statutes of this State, or in any manner authorize a violation of such antitrust and/or monopoly statutes; and it is further especially provided that if any provision of this act shall be so construed by any court of this State as to in any manner affect, alter, diminish, or modify any provision of the antitrust and/or monopoly statutes of this State, then in that event any such section, subsection, sentence, or clause or any provision of this act so construed as conflicting with said monopoly and/or antitrust statutes, it is hereby declared null and void rather than the antitrust and/or monopoly statutes of this State. The legislative intent herein expressed is to prevail and take precedence over the provisions of sections 10, 11, and 12, or any other section or sections of this act, regardless of any statement therein to the contrary.

SEC. 14. The provisions of this act shall end and terminate September 1st, 1935.

SEC. 15. The fact that the present laws are inadequate for the conservation of oil and gas, the prevention of waste, and the protection of the rights of the various owners of oil and gas lands creates an emergency and an imperative public necessity that the constitutional rule which requires bills to be read on three several days be suspended, and it is hereby suspended, and this act shall take effect and be in force from and after its passage, and it is so enacted.

SUMMARY OF REGULATIONS

OIL AND GAS CIRCULAR NO. 14; RAILROAD COMMISSION OF TEXAS MAY 1, 1931

RULE 1. Waste prohibited: See art. 6014, as amended by act of March 29, 1929, sec. 2.

RULE 2. Waste defined: See art. 6014, as amended by act of March 29, 1929, sec. 2.

RULE 3. Gas to be confined—Strata to be protected: "Whenever natural gas in commercial quantities, in a well-defined gas-bearing stratum known to contain natural gas in such quantities, is encountered in any well drilled for oil or gas in this State, such gas shall be confined to its original stratum until such time as the same can be produced and utilized without waste, and all such strata shall be adequately protected from infiltrating waters. But this rule shall not prevent the drilling deeper in search for oil in any well, if such drilling shall be prosecuted with diligence and if said gas be confined in its stratum and protected as aforesaid upon the completion of such well; but at any time after the expiration of seven days from the penetration of such gas-bearing stratum, even though such drilling deeper is being prosecuted with diligence, the railroad commission, or its conservation agent or any deputy of the latter, may require such gas-bearing stratum to be cased off and so protected, if in their judgment it shall be reasonably necessary and proper to do so." (Rule 3 amended November 12, 1921.)

RULE 4. Approved methods of preventing waste to be used: "All operators, contractors, or drillers, pipe-line companies, or gas-distributing companies drilling for or producing crude oil or natural gas, or piping oil or gas for any purpose, shall use every possible precaution with the most approved methods to stop and prevent waste of oil and gas, or both, in drilling and producing operations, storage, or in piping or distributing, and shall not wastefully utilize oil or gas, or allow same to leak or escape from natural reservoirs, wells, tanks, containers, or pipes."

RULE 5. "Commercial quantities" defined: "Any gas stratum showing a well-defined gas sand and producing gas shall be considered capable of producing gas in commercial quantities, and any gas coming from such a stratum of sand shall be considered a commercial quantity, and such stratum of sand shall be protected the same as under rule 3."

RULE 6. Gas to be taken ratably. Revoked; see circular 14, May 1, 1923.

RULE 7. Commission will regulate the taking of natural gas: "The Railroad Commission of Texas will, as occasion arises, prescribe rules and regulations for the determination of the natural flow of any well or wells in this State, and will regulate the taking of natural gas from any and all common sources of supply within the State so as to prevent waste, protect the interests of the public and of all those having a right to produce therefrom, and to prevent unreasonable discrimination in favor of one common source of supply as against another."

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RULE 8. Gas to be metered.

RULE 9. Notice of intention to drill or deepen: "Notice shall be given to the Railroad Commission of Texas or its agents of the intention to drill or deepen any well or wells and of the exact location of each and every such well. In case of drilling, notice shall be given at least five days prior to the commencement of drilling operations. (Blanks for notification and reports can be obtained by application to the Railroad Commission of Texas or its conservation agent in the field.)"

RULE 9A. Notice of intention to plug.

RULE 10. Plugging dry and abandoned wells. Manner and notice specified.

NOTE.—In *Southwestern Oil & Gas Co. v. Kimball Oil & Development Co.*, 224 S. W. 1111 (Tex. Civ. App., 1920), the lessor sued to enjoin the lessee from removing casing, relying on a lease provision giving lessor the right to drill deeper in the event of abandonment. The injunction was granted, the court citing the requirement of plugging of the well in the event casing was pulled, and holding that thereby the plaintiff's contractual right to drill deeper would be lost.

RULE 11. Log and plugging record to be filed with the commission.

RULE 12. Proper anchorage to be laid.

RULE 13. Equipment for conserving natural gas shall be provided before drilling in.

RULE 14. Separate slush pit to be provided.

RULE 15. Wells not to be permitted to produce oil and gas from different strata: "No well shall be permitted to produce both oil and gas from different strata unless it be in such a manner as to prevent waste of any character to either product and in accordance with rule 3."

RULE 16. Strata to be sealed off: "No well shall be drilled through or below any oil, gas, or water stratum without sealing off such stratum or the contents thereof, after passing through the sand, either by the mud-laden fluid process or by casing and packers, regardless of volume or thickness of sand: *Provided*, This rule shall be subject to rule 3 as that rule relates to natural gas."

RULE 17. Density of mud fluid where well containing water is drilled into oil or gas-producing strata.

RULE 18. Mud-laden fluid to be applied in pulling or redeeming casing.

RULE 19. Mud-laden fluid—when to be applied to completed wells.

RULE 20. Fresh water to be protected.

RULE 21. Separating devices for oil and gas to be installed.

RULE 22. Gas wells not to produce from different sands at the same time through the same string of casing: "No gas well shall be permitted to produce gas from different levels, sands, or strata at the same time through the same string of casing, and when gas upon being found is not needed for immediate use, the same shall be confined in its original stratum until such time as the same can be produced and utilized without waste, and in confining gas to its original place the mud-laden fluid process shall be used unless the character of the formation involved is sufficiently ascertained and understood to know that the casing and packer method with Braden-head attachment can be safely applied and competently used, and in the use of the casing, packing, and Braden-head method, separate strings of casing shall be run to each sand."

RULE 23. Shooting of wells regulated.

NOTE.—*Comanche Duke Co. v. Texas Pacific Coast & Oil Co.*, 298 S. W. 554 (Com. App. Tex., 1927), Revg. 274 S. W. 193, sustained a right to damages on behalf of one well owner on account of salt water intrusion occasioned by explosion of a large shot of nitroglycerin in an adjoining well. Rule 23 was not cited.

RULE 24. Gage to be taken—reports to the commission. (Open flow and rock pressure test quarterly.)

RULE 25. Production of gas to be restrained to 50 per cent of potential capacity: "When the gas from any well is being used, the flow or production thereof shall be restrained to 50 per cent of the potential capacity of the same; that is to say, in any day (24 hours) the well shall not be permitted to flow or produce more than one-half of the potential capacity thereof as shown by the last quarterly gage: *Provided*, That this rule shall not apply to casing-head gas: *And provided further*, That in cases of emergency, greater production may be used after special authority therefor has been secured from the Railroad Commission of Texas." (Rule 25 amended November 12, 1921.)

NOTE.—Sustained in *Magnolia Petroleum Co. v. Stroud*, 3 S. W. (2d) 462 (1928), which limited gas royalties to the agreed percentage of the allowable production rather than of the open flow of the well.

RULE 26. Notification of fires and breaks or leaks required.

RULE 27. Reports from pipe-line companies: "The Railroad Commission of Texas will, from time to time, require oil and gas pipe-line companies to make reports to the commission showing wells connected with their lines during any month, the amount of production taken therefrom, names of parties from whom oil and gas are purchased, and the amount of oil or gas purchased therefrom;

and all oil and gas pipe-line companies shall, in addition to other reports required by the rules of the commission, furnish to the commission duplicates of all reports made to the State comptroller under the oil and gas gross production tax laws. The commission will, in case of overproduction or for any other reason which it deems urgent, require oil or gas pipe-line companies to furnish daily reports of the amount of oil or gas purchased or taken from different wells or parties."

RULE 28. Pipe-line companies—Connection with oil or gas wells: "Pipe-line companies shall not connect with oil or gas wells until the owners or operators thereof shall furnish a certificate from the Railroad Commission of Texas that the conservation laws of the State have been complied with: *Provided*, This rule shall not prevent the temporary connection with any well or wells in order to take care of production and prevent waste until opportunity shall have been given the owner or operator of said well to secure certificate showing compliance with the conservation laws of the State."

NOTE.—Cited in *Oxford Oil Co.* v. *Atlantic Oil & Producing Co.*, 16 Fed. (2d) 639 (1926), which sustained Rule 37. Affirmed in 22 Fed. (2d) 597, Cert. den., 277 U. S. 585, 48 Sup. Ct. 433, 72 L. Ed. 1000 (1928).

RULE 29. Certificates—Showing compliance with conservation laws and rules prior to connection: "Owners or operators of oil or gas wells shall, before connecting with any oil or gas pipe line, secure from the Railroad Commission of Texas a certificate showing compliance with the oil and gas conservation laws of the State and conservation orders of the commission: *Provided*, That this rule shall not prevent temporary connection with pipe lines in order to take care of production until opportunity shall have been given for securing such certificate: *Provided further*, That the owners or operators of such wells shall, in a known or proven field, make application for such certificate in anticipation of production."

NOTE 1.—Cited in *Oxford Oil Co.* v. *Atlantic Oil & Producing Co.*, 16 Fed. (2d) 639 (1926), which sustained Rule 37. Affirmed in 22 Fed. (2d) 597.

NOTE 2.—Rule 29 was sustained in *Gilmore* v. *Straughan*, 10 S. W. (2d) 589, in which a pipeline company was held not obligated to connect to wells drilled in violation of Rule 37, and for which the land owner had not obtained the certificate required by Rule 29.

RULE 30. Drilling records to be kept.

RULE 31. Conservation agents to have access to all wells and all well records.

NOTE.—Cited in *Oxford Oil Co.* v. *Atlantic Oil & Producing Co.*, 16 Fed. (2d) 639 (1926), which sustained Rule 37. Affirmed in 22 Fed. (2d) 597.

RULE 32. Books to be kept—Reports to be made (stock sales).

RULE 33. Notice to contractors, drillers, and others to observe rules.

NOTE.—Cited in *Oxford Oil Co.* v. *Atlantic Oil & Producing Co.*, 16 Fed. (2d) 639 (1926), which sustained Rule 37. Affirmed in 22 Fed. (2d) 597.

RULE 34. Conservation agents—Cooperation with Federal inspectors (Bureau of Mines) provided.

RULE 35. Conservation agents to enforce these rules.

NOTE.—Cited in *Oxford Oil Co.* v. *Atlantic Oil & Producing Co.*, 16 Fed. (2d) 639 (1926), which sustained Rule 37. Affirmed in 22 Fed. (2d) 597.

RULE 36. Permits for pipe lines: "No pipe line, whether a common carrier or not, shall be used to transport oil or gas from any tract of land within this State, except to another tract immediately adjoining, without a permit from the Railroad Commission of Texas. Application for such permit shall be made upon the form prescribed by the Railroad Commission of Texas, and such permit will be granted when the Railroad Commission of Texas is satisfied, from such application and the evidence in support thereof, and its own investigation, that the proposed line is, or will be, so laid, equipped, and managed as to reduce to a minimum the possibility of waste.

"Such permit, if granted, shall be valid for only one year, and shall be revocable at any time after hearing had on 10 days' notice, if, in the judgment of the commission, any line is so unsafe or so improperly equipped or managed as to be likely to cause waste; or if, in the judgment of the railroad commission, the owner or operator of such line in the operation thereof is violating the acts of the thirty-sixth legislature, chapter 155, being an act to conserve the oil and gas resources of the State of Texas, or any rule or regulation of the railroad commission enacted under and in pursuance of said act."

RULE 37. Spacing of wells: "No well for oil or gas shall hereafter be drilled nearer than 300 feet to any other completed or drilling well on the same or adjoining tract or farm; and no well shall be drilled nearer than 150 feet to any property line: *Provided*, That the commission, in order to prevent waste or to protect vested rights, will grant exceptions permitting drilling within shorter distances than as above prescribed, upon application filed fully stating the facts, notice thereof having first been given to all adjacent lessees affected thereby. Rule 37 shall not for the present be enforced within the proven oil fields of the Gulf coast."

NOTE 1.—*Oxford Oil Co.* v. *Atlantic Oil & Producing Co.*, 16 F. (2d) 639 (1926), affd. 22 F. (2d) 597, C. C. A. 5, 1927, Cert. den., 277 U. S. 585, 72 L. Ed. 1000, 48 Sup. Ct. 433 (1928), held this rule valid in refusing an injunction and damages for failure of the Railroad Commission to grant a drilling permit for 10 wells on

a strip 3,190 feet long and 36 to 57 feet wide. The commission allowed only 4 (2, according to *Railroad Commission* v. *Bass*, 10 S. W. (2d) 586, 589, involving the same facts). In the Oxford case the attack was on the commission's authority to promulgate rule 37; in the Bass case, below, the reasonableness of the particular application of it was attacked.

NOTE 2.—*Railroad Commission* v. *Bass*, 10 S. W. (2d) 586, held reasonable the same order attacked in *Oxford Oil Co.* v. *Atlantic Oil & Producing Co.*, 16 Fed. (2d) 639, 22 Fed. (2d) 597, and reversed an injunction against the commission. *Railroad Commission* v. *Bass*, 10 S. W. (2d) 589, dissolved a temporary injunction in the same case. See also *Gilmore* v. *Straughan*, 10 S. W. (2d) 589, involving the same facts (cited under Rule 29).

NOTE 3.—Cited but not passed upon in *Humble Oil & Refining Co.* v. *Strauss*, 243 S. W. 528 (1922): "We, however, think the legislature has the power to authorize rules for conserving and preventing waste of oil."

NOTE 4.—Held to be a valid exercise of the police power, but an injunction was denied the commission against drilling of a well in violation of this order, on the ground of the commission's failure to pass upon the defendant's application for a drilling permit for five months. *State* v. *Jarmon*, 25 S. W. (2d) 936 (Tex. Civ. App., 1930).

RULE 38. Maps or sketches.

RULE 39. Fire hazard precautions (adopted May 1, 1920):

"(1) All permanent oil tanks or battery of tanks must be surrounded by a dike or ditch of at least the capacity of the tank or battery of tanks.

"(2) No flow tank, unless it is entirely buried, or other oil tank of any size shall hereafter be placed nearer than 150 feet to any derrick, rig, building, power plant, or boiler of any description, except where topography does not permit.

"(3) No field working tank having a capacity of 5,000 barrels or more shall hereafter be built nearer than 200 feet (measured from shell to shell) to any other like tank or tanks.

"(4) No battery of field storage tanks shall hereafter be placed nearer than 200 feet to any other battery.

"(5) Printed signs reading 'Dangerous; no smoking allowed,' or similar words, shall be posted in conspicuous places on each producing lease or farm.

"(6) All lessees' premises shall be kept clear of high grass, weeds, and combustible trash, within a radius of 100 feet around an oil tank, tanks, or producing wells.

"(7) Open earthen storage for merchantable oil is hereafter prohibited, except when the commission grants special permission in order to meet an unforeseen emergency. Where such storage is now in use, it must be discontinued within a reasonable time.

"(8) Swabbing is prohibited, except for the purposes of starting the flow, testing, or cleaning out a well, and such swabbing shall not continue for a longer period than 10 days without permission from the railroad commission. (Revised Dec. 1, 1928.)

"(9) All oil tanks, where there is a gas hazard, shall be well covered and provided with adequate gas vents.

"(10) No forge or open light shall be placed inside the derrick of a well showing oil or gas.

"(11) Boilers must be equipped with steam lines for fighting fire and must not be set nearer than 100 feet to any producing well.

"(12) All oil and gas pipe lines laid upon or across a public road or highway must be buried to a reasonably safe depth.

"(13) Wherever available and practicable, electric light and power shall be installed in congested drilling areas, upon order of the commission."

RULE 40. Vacuum pumps prohibited except in certain cases.

"The future installation of vacuum pumps or other devices for the purpose of putting a vacuum on any gas or oil-bearing stratum is prohibited, except as follows:

"(*a*) In the case of casing-head gas where the same is utilized, vacuum may be used, but not more than sufficient to gather the same into the lines and deliver it at the plant.

"(*b*) In fields which are depleted or practically depleted. But no vacuum pump shall be installed under authority of subdivision "b" without a permit from the Railroad Commission after application first made and notice to adjacent lease owners or operators.

"Nothing in this rule shall prevent the use of vacuum in any field where the same is now in use, but the Commission shall have the right, upon complaint, or of its own motion, to order the discontinuance or reduction of same, if it shall determine that such use is injurious to the producing formations or in conflict with the conservation laws of this State."

NOTE.—*Peterson* v. *Grayce Oil Co.*, 37 S. W. (2d) 367 (Tex. Civ. App., 1931) held that, regardless of whether one landowner could have recovered at common law from another on account of drainage occasioned by the latter's use of a vacuum pump, the Railroad Commission by promulgating Rule 40 had changed the common law rule so as to establish a new standard, breach of which would entitle the plaintiff to judgment if he could prove that the defendant was not within the exception established by subparagraph (a) of Rule 40.

RULE 41. Burning of carbon black:

"*Section 1.* The use of natural gas within the State of Texas for the purpose of obtaining therefrom, by the process of burning, the carbon-black content is hereby prohibited where there is any reasonable expectation, presently or in the near future, of the utilization of the gas for domestic or manufacturing purposes.

"*Sec. 2.* The erection, enlargement, maintenance, and operation of any plant or plants in Texas for the purpose of burning natural gas to obtain therefrom the carbon-black content is prohibited within this State, except when allowed by special permit granted by the Railroad Commission of Texas after due hearing.

"*Sec. 3.* Permits valid only for one year from the date of issuance may be granted after hearing had upon petition with ample notice to the public where it is made to appear by the evidence that it is advisable as a conservation measure to allow natural gas, after the gasoline content has been extracted, to be burned for the purpose of obtaining therefrom carbon black, and where it is shown that the gas territory from which such carbon-black plant is to be supplied is not sufficient in volume to justify its transportation for domestic or industrial use, or is so situated as to preclude a reasonable future demand for the gas in domestic or industrial consumption, or that it is impracticable to seal in the gas and conserve it in its stratum until it is practicable to transport same and use it in domestic and industrial consumption: *Provided, however*, That where it shall be established that residue gas from gasoline plants is wasted, and there is no public need or demand for said gas, after proper notice and public hearing the commission may grant permits to manufacture carbon black from said residue gas or from casing-head gas from which the gasoline content has been extracted, valid for a period of five years. Every permit so granted shall be so restricted as to safeguard and protect the public interest."

Sec. 4. Contents of petition for permit prescribed.

Sec. 5. Twelve-months' period for permit prescribed.

Sec. 6. Effective date February 19, 1921, stated.

RULE 42. Identification of wells—Signs required.

FIELD RULES

Special rules for particular fields are promulgated from time to time. Thus: Docket 120, order of December 8, 1932, prescribing production from the East Texas field, and allocating it.

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4020. Confining gas in unused well.

Any person or corporation in possession as owner, lessee, agent, or manager of any well in which natural gas has been found, shall, unless said gas is being utilized, within three months from the completion of said well, or at any time upon ceasing to use such well, confine the gas in said well until such time as it shall be utilized: *Provided*, That this section shall not apply to any well operated as an oil well.

4021. Plugging abandoned well.

Upon abandoning or ceasing to operate any well sunk in exploring for gas, the person or corporation that sunk the same shall fill up the well with sand or rock sediment to a depth of at least 20 feet above the gas-bearing rock and drive a round, seasoned wooden plug, at least 3 feet in length, equal in diameter to the diameter of the well below the casing, to a point at least 5 feet below the bottom of the casing; and immediately after drawing the casing, shall drive a round, seasoned wooden plug to a point just below where the lower end of the casing rested, which plug shall be at least 3 feet in length, tapering in form, and of the same diameter at the distance of 18 inches from the smaller end as the diameter of the hole below the point at which it is to be driven. After the plug has been properly driven there shall be filled on the top of the same, sand or rock sediment to a depth of at least 5 feet: *Provided*, That in case such geological formation shall be encountered in the bore as to make some other method more effective for preventing flooding by water from superposed strata, the State mine inspector may direct what other plan shall be pursued without unreasonable cost to the owner or lessee of the well.

4022. Penalties for neglect.

Any person or corporation who shall violate any of the provisions of section 4020 and 4021, shall be liable to a penalty of $200 for each and every violation thereof and to the further penalty of $200 for each 30 days during which such violation shall continue; and

all such penalties shall be recovered, with costs of suit, in a civil action or actions, in the name of the State for the use of the county in which the well shall have been opened.

4023. Rights of adjacent owner.

Whenever any person or corporation shall abandon any gas well and shall fail to comply with section 4021 any person or corporation lawfully in possession of lands adjacent to or in the neighborhood of said well may enter upon the land upon which said well is situated and take possession of said well and plug the same in the manner provided by section 4021, and may maintain a civil action in any court of the State against all or any of the owners or persons abandoning said well to recover the costs thereof. This shall be in addition to the penalties provided by section 4022.

4024. Right of way for pipe lines.

Any person, corporation, or association desirous of obtaining the right of way for a pipe line or lines, or for the location of any gas tank or reservoir, shall be entitled to exercise the right of eminent domain.

4025. Duties of owner when drilling well.

When any well shall be drilled in this State on lands producing or containing petroleum or natural gas, it shall be the duty of the owner or operator thereof, before drilling said well into the oil or gas bearing sand or strata, to incase such well in such manner as to effectually exclude and prevent all water from reaching said oil or gas bearing sand or strata. (Session Laws, 1909, p. 268.)

4026. Upon abandonment of well.

And it shall be the duty of said owner or operator, before abandoning or ceasing to operate any such well, to securely and effectually plug said well and to fill it up with sand or rock sediment to a depth of at least 50 feet above the top of the oil or gas bearing sand or strata in such manner as to exclude all water from reaching said oil or gas bearing sand or strata and also as to prevent any oil or gas escaping therefrom. (Session Laws, 1909, p. 268.)

4027. Penalty.

Any person, firm, or corporation violating the provisions of sections 4025–4026 shall be deemed guilty of a misdemeanor and shall be sentenced upon conviction thereof to the payment of a fine of not exceeding $1,000. (Session Laws, 1909, p. 268.)

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PIERCE'S CODE, 1929

VOL. 2, TITLE "MINERAL, OIL, ETC., LANDS," PP. 2038–2040

Sec. 6334–185. Oil and gas leases to citizens—Damages to owner.

The commissioner of public lands shall have the power to execute leases for the extraction of petroleum or natural gas from any State, tide or shore lands, or the beds of navigable waters, belonging to the State or which have been sold and the materials thereon reserved by the State, subject to the conditions hereinafter provided, upon application being made therefor upon a proper form by any citizen of the United States or person who has in good faith declared his intention of becoming a citizen of the United States, or any corporation organized and existing under the laws of any State or Territory of the United States and authorized to do business in this State: Provided, that no such lease for the extraction of petroleum or natural gas, of lands sold by the State and the minerals thereon reserved by the State, shall be executed until full payment of all damages that the owner of such lands may suffer shall have been made or tendered in the manner provided by law. Laws, 1901, 218–21; Laws, 1915, 415; Laws, 1919, 434–7; Laws, 1921, 569–73.

Sec. 6334–186. Amount of land—Time of lease—Graduated payments—Royalty.

No lease, or re-lease, of lands for the extraction of petroleum or natural gas shall be made for any larger area than six hundred and forty acres or one section of land nor for any term exceeding twenty years, nor for any sum less than fifteen cents per acre for the first year, thirty cents per acre for the second year, forty cents per acre for the third year, fifty cents per acre for the fourth year, and sixty cents per acre for the fifth year and each year thereafter, during the term of the lease, and in addition thereto said lease shall provide that the State shall be entitled to receive a sum not less than ten per cent of the gross value of all petroleum, and/or, natural gas extracted from the land described in the lease during the term of said lease, payable semiannually during said term less the semiannual rental due at the date of payment of the royalty. The term "gross value" shall be construed to mean the value of the petroleum and/or gas at

the well, when produced, without deduction for expenses of production. Laws, 1901, 218–21; Laws, 1915, 415; Laws, 1919, 434–7; Laws, 1921, 569–73.

Sec. 6334–187. Oils, etc., kept separate—Statements to land commissioner.

The holder of any lease from the State for the extraction of petroleum and natural gas shall extract, keep, maintain, ship, and sell all petroleum and/or natural gas extracted from the lands so leased, separate and distinct from all like products taken from other lands, and shall submit to the commissioner of public lands, at stated periods to be fixed by said commissioner, statements showing the total product taken from said leased lands, the total shipments of such products, and accounts showing the sales of all such products. Laws, 1901, 218–21; Laws, 1915, 415; Laws, 1919, 434–7; Laws, 1921, 569–73.

Sec. 6334–188. Regulations—Inspection—Additional provisions of leases.

The commissioner of public lands is authorized to make and enforce all rules and regulations in relation to the leasing of lands for the extraction of petroleum and/or natural gas, necessary to protect the interests of the State, and all books and accounts of every lessee of lands from the State for that purpose, and the property leased, together with all buildings, machinery, storage tanks, and appliances of every kind and nature whatsoever, shall be open to inspection by the commissioner of public lands, or such person as he may designate, at all times.

The commissioner of public lands shall have the power to incorporate in any lease of lands from the State for the purpose of extracting petroleum and/or natural gas such other and further provisions and conditions not inconsistent with the provisions and conditions contained in this act as may in his judgment be advantageous to the State. Laws, 1901, 218–21; Laws, 1915, 415; Laws, 1919, 434–7; Laws, 1921, 569–73.

Sec. 6334–189. Reports on oil, etc., under oath—Forfeiture.

All reports required to be made by lessees of lands from the State for the purpose of extracting petroleum and/or natural gas required by this act or by any rule or regulation of the commissioner of public lands shall be made under oath upon forms prescribed by the commissioner.

Failure on the part of the lessee of any lands from the State for the purpose of extracting petroleum and/or natural gas to comply

with any of the provisions of this act or the rules and regulations prescribed by the commissioner of public lands, or the terms of his lease, shall forthwith work a forfeiture of the lease, and the commissioner of public lands is not authorized to waive any such forfeiture. Laws, 1901, 218–21; Laws, 1915, 415; Laws, 1919, 434–7; Laws, 1921, 569–73.

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STATE OF WEST VIRGINIA

CODE, 1931, CH. 22, ART. 4

Sec. 1. Definitions.

Omitted.

Sec. 2. When well operator to file plat as prerequisite to drilling; contents; notice.

Omitted; relates to drilling in areas underlain with one or more workable beds of coal.

Sec. 3. Drilling permit; agreed location of well; location fixed by department of mines; exceptions thereto; docket of proceedings.

Omitted; relates to drilling in coal areas and provides for opportunity for coal operators to protest location of the wells, and hearing, followed by agreement on location or order by department of mines.

Sec. 4. Appeal by coal operator or well operator from location fixed or approved by department of mines; procedure.

Any coal operator excepting to any location fixed or approved by the department of mines or to the issuance of any drilling permit, and any well operator excepting to the refusal of the department to grant a drilling permit at the location shown in the plat mailed to the department as provided in section 2 of this article, or such location so shifted as to be still substantially the same or the equivalent thereof, may at any time within 10 days of the taking of such action by the department of mines appeal to the circuit court of the county in which the location involved lies. The procedure shall be by petition and answer, duly verified, and naming the department as one of the respondents. There shall be attached to the petition or filed therewith a transcript of the record before the department and copies of all papers filed, and the petition shall briefly set forth the matter in controversy, the ruling of the department and the relief sought. The respondents shall be required to answer under oath within 10 days after service of copies of the petition upon them and the procedure shall be expedited, as far as is reasonably possible, having regard to possible drainage or loss of title

by the well operator through its failure to complete a well within the period fixed by the terms of the lease under which it holds. The court may, by preliminary order, upon proper proof of the necessity therefor and the giving of proper security, stay the drilling of any well until a final decision on the appeal, and after a final hearing, at which any competent and relevant evidence may be introduced, may set aside any action or order of the department and enter such final order and decree as in its judgment is just and right and will best carry out the provisions of this article. From such final orders and decrees of the circuit court an appeal may be taken to the supreme court of appeals as now provided by law in proceedings in equity. During vacation periods or when for any reason the circuit court is not in session, said proceedings shall be before the judge of such court in vacation, or, in his absence, before the judge of an adjoining circuit, who may act, until the return of the regular judge to his circuit, whereupon all further proceedings shall be had before the regular judge or circuit court having initial jurisdiction therein, and all proceedings in vacation shall be of like force and effect as if before the court in session. (Acts, 1929, ch. 86, sec. 4.)

Sec. 5. Protective devices when well penetrates workable coal bed.

Omitted.

Sec. 6. Protective devices when gas is found beneath or between workable coal beds.

Omitted.

Sec. 7. Continuance of such protective devices during life of well.

Omitted.

Sec. 8. Protective devices when well is drilled through horizon of coal bed from which coal has been removed.

Omitted.

Sec. 9. Plugging and abandonment of well; notice of intention; affidavit showing time and manner.

Prior to the abandonment of any well the well operator shall notify, by registered mail, the coal operator or operators to whom notices are required to be given by section 2 of this article, and the department of mines, of its intention to plug and abandon any such well (using such form of notice as the department may provide),

giving the number of the well and its location and fixing the time at which the work of plugging and filling will be commenced, which time shall be not less than five days after the day on which such notice so mailed is received or in due course should be received by the department of mines, in order that a representative or representatives of the coal operator and of the department, or of both, may be present at the plugging and filling of the well. Whether such representatives appear or do not appear, the well operator may proceed at the time fixed to plug and fill the well in the manner hereinafter described. When said plugging and filling have been completed, an affidavit, in triplicate, shall be made (on a form to be furnished by the department) by two experienced men who participated in the work, in which affidavit shall be set forth the time and manner in which the well was plugged and filled; one copy of this affidavit shall be retained by the well operator, another (or true copies of same) shall be mailed to the coal operator or operators, and the third to the department of mines. (Ibid., sec. 9.)

NOTE 1.—*Held*, that a landowner could recover both at common law and under this statute for damage to his wells sustained on account of improper plugging of the defendant's well. *Atkinson* v. *Virginia Oil & Gas Co.*, 72 W. Va. 707, 79 S. E. 647 (1913).

NOTE 2.—A prior plugging statute was before the court in *Talbott* v. *Southern Oil Co.*, 60 W. Va. 423, 55 S. E. 1009 (1907), which held that a lessor's complaint for damages occasioned by improper plugging by his lessee constituted a good cause of action both under the statute and common law.

Sec. 10. Methods of plugging well.

Omitted; describes details as to composition of plugging material, provisions against cavities, protection of coal, etc.

Sec. 11. When coal operator to file maps and plans as prerequisite to extension of coal operations; petition for leave to conduct operations within 200 feet of well; proceedings thereon.

Omitted.

Sec. 12. Supervision by department of mines over drilling and mining operations; complaints; hearings; appeals.

The department shall exercise supervision over the drilling, casing, plugging, and filling of all wells and of all mining operations in close proximity to any well and shall have such access to the plans, maps, and other records and to the properties of the well operators and coal operators as may be necessary or proper for this purpose, and, either as the result of its own investigations or pursuant to charges made by any well operator or coal operator, the department may

itself enter, or shall permit any aggrieved person to file before it, a formal complaint charging any well operator with not drilling or casing, or not plugging or filling, any well in accordance with the provisions of this article, or charging any coal operator with conducting mining operations in proximity to any well contrary to the provisions of this article or to the order of the department. True copies of any such complaints shall be served upon or mailed by registered mail to any person so charged, with notice of the time and place of hearing, of which the operator or operators so charged shall be given at least 5 days' notice. At the time and place fixed for hearing, full opportunity shall be given any person so charged or complaining to be heard and to offer such evidence as desired, and after a full hearing, at which the department may offer in evidence the results of such investigations as it may have made, the department shall make its findings of fact and enter such order as in its judgment is just and right and necessary to secure the proper administration of this article, and, if it deems necessary, restraining the well operator from continuing to drill or case any well or from further plugging or filling the same, except under such conditions as the department may impose in order to insure a strict compliance with the provisions of this article relating to such matters, or restraining further mining operations in proximity to any well, except under such conditions as the department may impose. From any such order an appeal, naming the department as a respondent, may be taken by the operator or operators so restrained, within 10 days of notice of entry of the same, to the circuit court of the county in which the well involved is located, and the department or complainant or complainants, or both, may, in case such order is disobeyed, apply at any time to such circuit court for a decree enforcing the same. (Ibid., sec. 12.)

Sec. 13. Rules and regulations; hearings before department of mines; appeals.

The department shall prescribe rules of procedure and for offering evidence in all matters brought before it and shall prepare and, on request, furnish to applicants copies of forms of notices and of other forms that the department may require to be used and prescribe the manner of serving the same. The department may also promulgate such other rules and regulations as it may deem necessary or helpful in securing uniformity of procedure in the administration of this article. Any matter in controversy before the department shall, after hearing or hearings, of which all persons interested have had due notice and at which they have been given an opportunity to appear and be heard and to offer evidence and to make argument by counsel if desired, be decided by the department as may seem to it to be just and reasonable and necessary or desirable for the proper enforcement of the provisions of this article.

Whether or not it be so expressly stated, an appeal from any final decision or action by the department in administering the provisions of this article may be taken by any aggrieved person within 10 days of notice of such action or decision, to the circuit court of the county in which the subject matter of such decision or action is located, and in all cases of appeals to the circuit court, that court shall certify its decisions to the department of mines, and from all such final decisions an appeal shall lie to the supreme court of appeals as now provided by law in cases in equity. Any party feeling aggrieved by the final order of the circuit court, affecting him or it, may present his or its petition in writing to the supreme court of appeals, or to a judge thereof in vacation, within 20 days after the entry of such order, praying for the suspension or modification of such final order. The applicant shall deliver a copy of such petition to the department of mines and to all other parties of record before presenting the same to the court or judge. The court or judge shall fix a time for the hearing on the application, but such hearing shall not be held sooner than seven days, unless by agreement of the parties, after its presentation, and notice of the time and place of such hearing shall be forthwith given to the department of mines and to all other parties of record. If the court or judge, after such hearing, be of opinion that such final order should be suspended or modified, the court or the judge may require bond, upon such conditions and in such penalty and impose such terms and conditions upon the petitioner as are just and reasonable. For such hearing the entire record before the circuit court or a certified copy thereof shall be filed in the supreme court, and that court, upon such papers, shall promptly decide the matter in controversy as may seem to it to be just and right, and may award costs in each case as to it may seem just and equitable. (Ibid., sec. 13.)

Sec. 14. Preventing waste of gas.

Natural gas shall not be permitted to waste or escape from any well or pipe line, when it is reasonably possible to prevent such waste, after the owner or operator of such gas, or well, or pipe line has had a reasonable length of time to shut in such gas in the well, or make the necessary repairs to such well or pipe line to prevent such waste: *Provided, however*, That (A) if, in the process of drilling a well for oil or gas, or both, gas is found in such well and the owner or operator thereof desires to continue to search for oil or gas, or both, by drilling deeper in search of lower oil or gas bearing strata, or (B) if it becomes necessary to make repairs to any well producing gas, commonly known as "cleaning out," and

if in either event it is necessary for the gas in such well to escape therefrom during the process of drilling or making repairs, as the case may be, then the owner or operator of such well shall prosecute such drilling or repairs with reasonable diligence, so that the waste of gas from the well shall not continue longer than reasonably necessary, and if, during the progress of such deeper drilling or repairs, any temporary suspension thereof becomes necessary, the owner or operator of such well shall use all reasonable means to shut in the gas and prevent its waste during such temporary suspension: *Provided further*, That in all cases where both oil and gas are found and produced from the same oil and gas bearing stratum, and where it is necessary for the gas therefrom to waste in the process of producing the oil, the owner or operator shall use all reasonable diligence to conserve and save from waste so much of such gas as it is reasonably possible to save. (Acts 1891, ch. 106, sec. 1; Acts 1897, ch. 58, sec. 3; Code 1923, ch. 62D, sec. 3.)

Sec. 15. Right of adjacent owner or operator to prevent such waste; recovery of cost.

If the owner or operator of any such well shall neglect or refuse to drill, case, and equip, or plug and abandon, or shut in and conserve from waste the gas produced therefrom, as required to be done and performed by the preceding sections of this article, for a period of 20 days after a written notice so to do, which notice may be served personally upon the owner or operator, or may be posted in a conspicuous place at or near the well, it shall be lawful for the owner or operator of any adjacent or neighboring lands to enter upon the premises where such well is situated and properly case and equip such well, or, in case the well is to be abandoned, to properly plug and abandon it, or in case the well is wasting gas, to properly shut it in and make such needed repairs to the well to prevent the waste of gas, in the manner required to be done by the preceding sections of this article; and the reasonable cost and expense incurred by an owner or operator in so doing shall be paid by the owner or operator of such well and may be recovered as debts of like amount are by law recoverable. (Acts 1891, ch. 106, secs. 4, 5; Acts 1897, ch. 58, sec. 4; Code 1923, ch. 62D, sec. 4.)

Sec. 16. Restraining waste.

Aside from and in addition to the imposition of any penalties under this article, it shall be the duty of any circuit court in the exercise of its equitable jurisdiction to hear and determine any bill or bills in equity which may be filed to restrain the waste of natural gas in violation of this article, and to grant relief by injunction or by other decrees or orders, in accordance with the principles and practice in equity. The plaintiff in such bill shall have sufficient standing to maintain the same if he shall aver and prove that he is interested in the lands situated within the distance of 1 mile from such well, either as the owner of such land, or of the oil or gas, or both, thereunder, in fee simple, or as an owner of leases thereof, or of rights therein for the production of oil and gas, or either of them. (Acts 1897, ch. 58, sec. 7; Code 1923, ch. 62D, sec. 7.)

Sec. 17. Offenses; penalties.

Any person or persons, firm, partnership, partnership association, or corporation willfully violating any of the provisions of this article which prescribe the manner of drilling and casing or plugging and filling any well, or which prescribe the methods of conserving gas from waste, or which fix the distance from wells within which mining operations shall not be conducted without the approval of the department, or violating the terms of any order of the department allowing mining operations within a lesser distance of any well than that prescribed by the article, shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding $2,000 or imprisonment in jail for not exceeding 12 months, or both, in the discretion of the court, and prosecutions under this section may be brought in the name of the State of West Virginia in the court exercising criminal jurisdiction in the county in which the violation of such provisions of the article or terms of such order was committed, and at the instance and upon the relation of any citizens of this State. (Acts 1891, ch. 106, sec. 3; Acts 1897, ch. 58, sec. 6; Code, 1923, ch. 62D, sec. 6; Code, 1929, ch. 86, sec. 14.)

SUMMARY OF REGULATIONS

PROMULGATED BY DEPARTMENT OF MINES, EFFECTIVE JANUARY 1, 1931; APPROVED BY ATTORNEY GENERAL JANUARY 1, 1931

1. Recital of statutory authority of department of mines.

2. Workable seams (of coal) defined.

3. Rules of procedure and evidence to follow West Virginia court practice.

4. All well and mine owners required to register with the department.

5. "No well, penetrating any of the workable coal seams or oil or gas producing strata of this State, may be drilled, redrilled, or deepened without the well operator having first obtained a permit

from the department of mines to drill, redrill, or deepen such well at such location."

6. Maps required to be filed.

7. Location maps required to be furnished adjoining mine owners.

8. Coal operators required to show oil and gas wells on their property maps.

9. Logs required to be kept and filed.

10. Information to be included in " data sheets " prescribed.

11. Casing required.

12. Shutting in of gas well prohibited until adjoining mine owners are notified.

13. Notice of intention to plug required to be given to the department and adjoining coal operators; methods prescribed.

14. Contents of notice prescribed.

15. " Information may be obtained regarding the location, plugging, or abandonment of any well penetrating any workable seam of coal, or any of the oil or gas bearing strata of this State, or of the strata encountered in the drilling of such well, or of the condition prevailing in any mine at the time of its abandonment in the vicinity of any such well, in the following manner:

"(A) Any well owner or well operator, or any other person having in his possession data or personal knowledge of the manner in which any oil well, gas well, or other well penetrating any workable coal seam, or any oil or gas bearing strata in this State, was plugged or abandoned or the location thereof, shall make a verified statement of such information under oath to the department of mines upon the request of said department for such information to the end that such wells may be properly located on the mine maps or other maps covering the territory so that when the adjacent coal may be worked or other operations carried on, sufficient barrier pillars may be left intact between such wells and the adjacent mine workings or other workings to afford adequate protection to the well and to the mine workings or other workings against any body of water, oil, or gas that might be in said well or adjacent thereto, entering the mine workings or other workings and endangering the lives and health of those working therein, and that proper protection may be given to any other adjacent mining or quarrying operations or property.

"(B) Any well owner or well operator or any other person having in his possession data or personal knowledge regarding the strata or log of any well penetrating any workable coal seam or any of the oil or gas bearing strata of this State, or data or personal knowledge regarding the casing and tubing of any such well, shall make a verified statement under oath of all such information which they may possess to the department of mines upon the request of the department for such information to the end that such protection may be provided for the mines, quarries, and the wells involved as the conditions may warrant or require.

"(C) Any coal owner, coal operator, or any other person having in his possession data or personal knowledge regarding the amount of coal extracted in any coal mine in the vicinity of any oil or gas well, or other well penetrating such coal seam or coal mine; or of the condition of the pillars or coal remaining in such mine in the vicinity of such well at any certain date or at the time that the mining operations were abandoned in the vicinity of such well, shall make a verified statement under oath of all such information which he may possess to the department of mines upon the request of the department for such information; to the end that such protection may be provided for the mines, quarries, and the wells involved as the conditions may warrant or require."

16. Data (" work order ") required to accompany notice of intention to plug stated.

17. Provisions for objections by mine owners to manner of plugging proposed in " work order."

18. Markers required for abandoned wells.

19. " When for any reason any oil or gas well or other well penetrating any workable coal seam has been improperly plugged and filled when abandoned by the well operator, and when no responsible owner can be found for said well, then the coal operator, when directed by the department of mines, shall proceed to do or cause to be done whatever is necessary in the matter to properly protect the mine from any body of water, oil, or gas which might be in or adjacent to said well, before conducting any mining operations in the vicinity of such well."

20. " When for any reason any oil or gas well or other well penetrating any of the oil or gas producing strata of this State, has been improperly abandoned or is being neglected and allowed to permit the waste of oil or gas or is in such a condition as to permit the infiltration of water into the oil or gas producing strata in the vicinity of such well, the well operator, owning the said well or paying rental on the territory on which said well is located, if such there be, when directed by the department of mines, shall proceed to plug and fill said well in accordance with section 10 of article 4, chapter 22, of the code."

21. "Since an adjacent owner or operator has certain rights to prevent the waste of gas under sections 15 and 16 of article 4, chapter 22, of the code, and since the department of mines is charged with the administration of this article, as set forth in section 13 of this same article and chapter of the code aforesaid, the said adjacent owner or operator shall, when directed by the department of mines, proceed to do or cause to be done whatever is necessary in the manner provided under sections 15 or 16 aforesaid, to prevent the waste of oil or gas through such well, or to prevent the infiltration of water through said well into the oil or gas bearing strata in the vicinity of such well, to the end that such strata shall be properly protected."

22. Proper anchorage requred to be laid.

23. Equipment for conserving natural gas required to be installed before "drilling in."

24. Productive strata required to be protected before deepening.

25. Approved methods of preventing waste to be used: "All well operators, contractors, or drillers, pipe-line companies, or gas-distributing companies, drilling for or producing crude oil or natural gas, or piping oil or gas for any purpose, shall use every possible precaution in accordance with the most approved methods to stop and prevent waste of oil and gas, or both, in drilling and producing operations, or in piping or distributing, and shall not wastefully utilize oil or gas or allow the same to leak or escape from natural reservoirs, wells, or pipe lines."

26. Wells permitted to produce oil and gas from different strata: "Wells may be permitted to produce both oil and gas from different strata if it be in such manner as to prevent waste of any character to either product and in accordance with section 14 of article 4 of the Code."

27. Gas wells producing from different strata at the same time through different strings of casing: "So far as it is practical to do so, gas being produced at a high pressure should be separated in the well, from that being produced at a much lower pressure, by means of casing, tubing, braden heads, and packers, in order to eliminate the flow of high-pressure gas into the low-pressure sands."

28. Notice to contractors, drillers, and others to observe rules.

29. Approval by department required for size of coal pillars to be left around a well by mine operator.

ANNOTATIONS TO OMITTED STATUTES:

LAWS 1919, CHAPTER 71.

This statute, requiring gas companies to supply requirements of West Virginia consumers and by inference limiting the export of natural gas to the surplus above domestic requirements, was held unconstitutional in *Pennsylvania* v. *West Virginia; Ohio* v. *West Virginia* (suits consolidated), 262 U. S. 553, 43 Sup. Ct. 658, 67 L. Ed. 1117 (1923).

LAWS 1925 (FIRST EXTRAORDINARY SESSION), CH. 1, SEC. 2-A.

A tax on gross proceeds, levied on valuations of oil and gas at the well, was sustained, although part of the products taxed moved into interstate commerce, in *Hope Gas Co.* v. *Hall*, 274 U. S. 284, 47 Sup. Ct. 639, 71 L. Ed. 1049 (1927).

LAWS 1919 (EXTRAORDINARY SESSION), c. 5.

A tax levied hereunder on oil shipped out of the State was held unconstitutional in *Eureka Pipe Line Co.* v. *Hallanan*, 257 U. S. 265, 42 Sup. Ct. 101, 66 L. Ed. 227 (1921), and a similar tax on gas transported out of the State was held unconstitutional in *United Fuel Gas Co.* v. *Hallanan*, 257 U. S. 277, 42 Sup. Ct. 105, 66 L. Ed. 234 (1921).

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STATE OF WYOMING

ACT OF FEBRUARY 25, 1921

LAWS 1921, CH. 157

AN ACT regulating the drilling and operation of oil and gas wells and repealing chapter 274, Compiled Statutes of Wyoming, 1920. (Approved February 25, 1921; ch. 157, Laws of 1921.)

Rules and regulations.

SECTION 1. For the purpose of conserving the natural resources of the State and to prevent waste thereof through negligent methods of operation, the State geologist shall prescribe and enforce rules and regulations governing the drilling, casing, and abandonment of oil and gas wells and the waste of oil and gas therefrom upon all lands in the State of Wyoming, excepting public lands subject to the act of Congress approved February 25, 1920 (Public, 146). The rules and regulations so prescribed shall be those from time to time adopted by the Bureau of Mines or by the Secretary of the Interior of the United States pursuant to said act of Congress, governing methods of operations of operators upon lands embraced within permits or leases issued under the provisions of said act of Congress, and it shall be the duty of all persons and corporations drilling or operating oil or gas wells upon patented or State land to comply with the said rules and regulations, to file with the State geologist all logs of wells and other reports required thereby, and to case, control, and plug all wells as therein prescribed.

Appointment of inspectors.

SEC. 2. To enable him to carry out the duties imposed upon him by this act and to enforce the rules and regulations so prescribed, the State geologist shall appoint, with the approval of the governor, two inspectors, who shall be petroleum engineers or practical drillers, with not less than three years' field experience, and who shall receive a salary of $250 per month and their actual traveling expenses. The State geologist may from time to time delegate his authority to supervise the abandonment of wells or the extinguishment of fire to an inspector of the Bureau of Mines or to the field superintendent of any company or operator operating in the same field, who shall receive no compensation, but no such appointment of a special representative shall be made without the consent of the owner of the well.

Reports shall be confidential.

SEC. 3. All well logs and reports filed with the State geologist by any operator shall be confidential and shall be disclosed to no person without the written authority of the operator: *Provided*, That said logs and reports may be offered in evidence, if relevant, in any prosecution under this act.

Violation.

SEC. 4. Any person or corporation violating the provisions of this act, or rules and regulations prescribed pursuant hereto or the lawful orders of the State geologist or his inspector under said rules and regulations, shall upon conviction be fined not more than $500 or imprisoned not more than six months.

Repealing act.

SEC. 5. All of chapter 274, Wyoming Compiled Statutes, 1920, is hereby repealed.

SEC. 6. This act shall take effect and be in force from and after April 1, 1921.

(Approved February 25, 1921.)

ACT OF FEBRUARY 24, 1919

LAWS 1919, CH. 125

AN ACT for the protection and conservation of the supply of natural gas of the State of Wyoming; prohibiting the waste and wasteful use of natural gas through the burning or consumption thereof for the manufacturing or producing of carbon or other resultant products therefrom; prohibiting the taking, using, sale, or other disposition of natural gas from gas wells for such purposes; and providing penalties for the violation of such act. (Approved February 24, 1919; Laws of 1919, p. 169.)

Wasteful and extravagant use defined.

SECTION 1. The use, consumption, or burning of natural gas taken or drawn from any natural-gas well or wells, or borings from which natural gas is produced for the products where such natural gas is burned, consumed, or otherwise wasted without the heat therein contained being fully and actually applied and utilized for other manufacturing purposes or domestic purposes is hereby declared to be wasteful and extravagant use of natural gas and shall be unlawful, when such gas well or source of supply is located within 10 miles of any incorporated town or industrial plant.

Manufacture of carbon prohibited.

SEC. 2. No person, firm, or corporation having the possession or control of any natural-gas well or wells, except as herein provided, or borings from which natural gas is produced, whether as a contractor, owner, lessee, agent, or manager, shall use, sell, or otherwise dispose of natural gas, the product of any such well or wells, or borings for the purpose of manufacturing or producing carbon or other resultant products from the burning or consumption of such natural gas, without the heat therein contained being fully and actually applied and utilized for other manufacturing purposes or domestic purposes.

NOTE.—Held constitutional, and injunction against enforcement denied, in *Walls* v. *Midland Carbon Co.*, 254 U. S. 300, 41 Sup. Ct. 118, 65 L. Ed. 276 (1920).

Penalty.

SEC. 3. Any person, firm, or corporation violating any of the provisions of this act shall be guilty of a misdemeanor and shall be punished by a fine of not less than $100 or more than $1,000 for each offense, and each and every day in which any person, firm, or corporation shall violate any of the provisions hereof shall constitute a separate offense hereunder and subject the offender to the penalty hereby provided.

ACT OF MARCH 2, 1927

AN ACT to amend and reenact section 224, Wyoming Compiled Statutes, 1920, relating to the duties of the State geologist. (Approved March 2, 1927.)

State geologist—Duties in connection with oil industry.

SEC. 224. * * * He shall be charged with the duty of enforcing all of the laws of the State of Wyoming relating to the oil industry. It shall be his further duty to perform such other acts as are provided by the laws of the State of Wyoming relating to the oil and mineral deposits (other than coal deposits).

ACT OF MARCH 5, 1931

LAWS 1931, CH. 95

MINERAL LEASES UPON STATE LAND

AN ACT to amend and reenact section 716, chapter 58, Wyoming Compiled Statutes, 1920, relating to mineral leases upon State and school lands, the terms of lease, and providing for development under unit operation.

Be it enacted by the Legislature of the State of Wyoming:

SECTION 1. That section 716, chapter 58, Wyoming Compiled Statutes, 1920, be amended and reenacted so as to read as follows:

[*Leases of State lands.*]

"SEC. 716. The State board of land commissioners are hereby authorized to lease for a term of 10 years, with the preferential right in the lessee to renew his lease for successive periods of 10 years, any State or school lands supposed to contain coal, oil, or minerals, and to make and establish rules and regulations governing the issuance of such leases and covering the conduct of development and mining operations to be carried on thereunder."

[*Sec. 2. Unit operation.*]

The board is authorized to join on behalf of the State in cooperative or unit plans of development or operation on oil and gas pools with the United States Government and its lessees or permittees and/or others, and for that purpose is hereby authorized to modify and change any and all terms of the leases so issued under the provisions of this act to facilitate the efficient and economic production of oil and/or gas from the lands so affected.

[*Repeal.*]

SEC. 3. All acts and parts of acts in conflict herewith are hereby repealed.

[*Effective date.*]

SEC. 4. This act shall take effect and be in force from and after its passage.

Approved March 5, 1931.

ANNOTATIONS TO OMITTED STATUTES:

Sec. 4496 (Comp Stat. 1920).

An action by a landowner for damages on account of failure of an operator to plug in accordance with this section resulted in judgment for the defendant on proof that the plugging had been adequate, although not strictly in accord with the statutory requirement. *Martel* v. *Hall Oil Co.*, 36 Wyo. 166, 253 Pac. 862 (1927).

SUMMARY OF REGULATIONS

JULY 1, 1929. OFFICE OF STATE GEOLOGIST, CIRCULAR NO. 5

SEC. 1. POWERS AND DUTIES OF STATE OIL AND GAS INSPECTOR AND HIS ASSISTANTS

(A) To visit from time to time lands where operations for the discovery or production of oil and gas are conducted; to inspect and supervise such operations with a view to preventing waste of oil and gas, damage to formations or deposits containing oil, gas, or water, or to coal measures or other mineral deposits, injury to life or property, or economic waste; and to issue, in accordance with the provisions of the lease and these regulations, such necessary instructions to lessees as will effectively prevent waste or damage to deposits containing oil, gas, water, or other minerals, or injury to life or property.

(B) To make reports to the State geologist.

(C) To prescribe form of operators' reports, etc.

(D) To require that tests shall be made to detect wastes of oil and gas, as well as the presence of oil, gas, or water in a well, and to prescribe or approve the methods of making such tests.

(E) To require the correction, in a manner to be prescribed or approved by him, of any condition existing subsequent to the completion of a well which is causing, or is likely to cause, damage to any formation bearing oil, gas, or water, or to coal measures or other mineral deposits, or which is dangerous to life or property or wasteful of oil or gas, and to effect compliance with his orders for such correction may hold the property under seal until his orders are complied with.

(F) To determine the percentage of the potential capacity of any gas well which may be utilized when, in his opinion, such action is necessary to properly protect the gas-producing formations. The assistant or his representative likewise will specify the time and method for determining the potential capacity of gas wells.

(G) To assist and advise with lessees, making tests, and carrying on experiments for the purpose of increasing the efficiency of operation.

SEC. 2: REQUIREMENTS FOR LESSEES

(A) To conform to the regulations and the instructions of the inspector.

(B) To designate a local agent.

(C) The lessee shall not drill any well closer than 200 feet from any of the outer boundaries of the land covered by a permit or lease except as closer spacing may be necessary to protect against offset wells on lands the title to which is not held by the State of Wyoming.

(D) The lessee shall not begin to drill, redrill, deepen, plug, or abandon any well or alter the casing in it without first notifying the State geologist or his representative of his plan or intention and receiving approval of the contemplated work.

(E) To mark all rigs.

(F) To keep and file drilling and plugging records.

(G) To take precautions against gas pressures in wildcat or high-pressure areas.

(H) To provide a slush pit for mud when drilling with cable tools.

(I) To provide an auxiliary mud pit for emergencies and drilling with rotary tools.

(J) To shut off water from any oil or gas bearing strata.

(K) To protect upper productive strata before deepening.

(L) "The lessee shall prevent any oil or gas well from blowing open and shall take immediate steps and exercise due diligence to bring under control any 'wild' or burning oil or gas well."

(M) To eliminate emulsion so far as possible.

(N) To avoid pollution of surface streams.

(O) "All oil run from State leases shall be gauged according to methods approved by the State geologist or his representative. The lessee shall provide tanks suitable for containing and accurately measuring the crude oil produced from the wells, and shall furnish to the assistant oil and gas inspector at least two accurate copies of all tank tables. The lessee shall not, except during an emergency, and by special permission of the assistant oil and gas inspector, permit oil to be stored or retained in earthen reservoirs or in any other receptacles in which there may be undue waste of oil by seepage or evaporation."

(P) To secure approval of plans prior to plugging.

(Q) "The lessee shall prevent the waste of natural gas or its wasteful utilization. The use of gas in its natural state in engines, pumps, or similar equipment where its pressure is the direct operating force is prohibited unless the exhaust gas is conserved for use as fuel or unless special permission is obtained from the oil and gas inspector or his representative. Other conditions or methods which, in the opinion of the oil and gas inspector or his representatives, are wasteful of natural gas but are not specifically mentioned will not be permitted."

(R) To exercise precaution against accidents and fires.

(S) "In matters pertaining to the operations of oil and gas properties, not specifically mentioned in the foregoing regulations, the oil and gas inspector or his representative shall have power to require of lessees compliance with such orders as may be necessary to effect the greatest saving of oil or gas. Subjects of controversy shall be settled in conference between the lessee and the oil and gas inspector or his representatives, but the oil and gas inspector or his representatives shall have final authority except as hereinafter provided."

SEC. 3: NATURAL GAS AND GASOLINE—MEASURE OF NATURAL GAS

(OMITTED)

SEC. 4: REPORTS TO BE MADE BY LESSEE

Notice of intention to drill; of intention to change plans; of date for test of water shut-off; report on result of water shut-off; notice of intention to redrill or repair; of intention to shoot; subsequent record of shooting; record of perforating casing; notice of intention to pull or otherwise alter casing; of intention to abandon well; subsequent report of abandonment; supplementary well history; operators' monthly report of wells; log of well; special forms.

SEC. 5: ENFORCEMENT OF ORDERS

If the lessee fails to comply with these regulations or any part thereof or with the order or orders of the State oil and gas inspector or his assistants, the State oil and gas inspector or his assistant shall have authority to require him to suspend the operation or practice that conflicts with the regulations or orders or the use of any device that the oil and gas inspector or his assistant may consider wasteful or improper. This order of suspension shall remain in force until the lessee complies with the regulations or orders that have been violated or until such order of suspension has been revoked by the State geologist; provided, that when the continuance of such operation or practice, or of the use of the device considered wasteful or improper does not threaten immediate, serious, and irreparable damage to oil or gas or other valuable mineral deposits, the oil and gas inspector may temporarily waive compliance with such order of suspension pending an appeal to and a review by the State geologist of such order.

SEC. 6: BONDS—FORM PRESCRIBED

(OMITTED)

PROVINCE OF ALBERTA, CANADA

LEGISLATION— PAGE

1931: Act of March 28, 1931, Stats. 21 Geo. V., c. 47, p. 279 . . 421
1932: Act of April 6, 1932 424

REGULATIONS—*Field orders are published from time to time.*

PROVINCE OF ALBERTA, CANADA

ACT OF MARCH 28, 1931

STATS. ALBERTA, 21 GEO. V, CH. 47, P. 279; 1931

An Act Respecting Oil and Gas Wells. (ASSENTED TO MARCH 28, 1931.)

His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

1. This Act may be cited as "*The Oil and Gas Wells Act, 1931.*"

2. This Act shall apply to all oil and gas wells, whether drilled before or after the coming into force of this Act, and notwithstanding the terms of any lease or grant from the Crown in the right of Canada, or from any other person to the contrary.

3. (*1*) The Lieutenant Governor in Council may from time to time make regulations—

(A) forbidding any person to drill or to undertake to drill any oil well or gas well unless he is licensed so to do by the Minister of Lands and Mines;

(B) forbidding the drilling of any oil well or gas well in any land whatsover within a prescribed distance of the limits of such land or of the boundary of any road or road allowance;

(C) requiring notice of intention to drill before drilling and of intention to abandon drilling before abandonment thereof;

(D) as to the location of the points at which drilling for oil and gas may be done, including the distances between or off-setting of any such points;

(E) prescribing the methods to be employed in any drilling operations, and making provision for shutting off water;

(F) prescribing the measures to be adopted to confine any gas, oil, or water encountered during drilling operations to the original strata for such periods as may be deemed advisable, and to protect any of the contents of such strata from infiltration, inundation, and migration;

(G) as to the kind and nature of tools, casing, and equipment which may be used for drilling, either generally or in any specified case, and regulating the construction, alteration, or use of any works, machinery, plant, or appliance in and for the development, production, transmission, supply, distribution, measurement, consumption, or handling of any natural gas or oil;

(H) providing for the registration of all persons having charge of any drilling operations and prohibiting the carrying on of any drilling operations unless the same are conducted under the continuous and personal supervision of a person or persons registered as having charge thereof;

(I) prohibiting the drilling through oil, gas, water, coal, or other minerals without taking adequate measures to confine any oil, gas, or water to its own strata, and to protect any coal seam or any workings therein from injury, and to prescribe the nature and extent of such measures, either generally or in any specified case;

(J) requiring the provision of proper anchorage, casing, and cementation of well casings;

(K) requiring the keeping of accurate logs, and the taking of and keeping of geological samples and cores and samples of all oil, gas, and water encountered, and the frequency of such taking by the persons responsible for or engaged in the drilling of oil and gas wells;

(L) prescribing the measures to be taken before the commencement of drilling and during drilling, with the object of conserving any gas, oil, or water likely to be met with;

(M) as to the methods of operation to be observed during drilling and in the subsequent management and conduct of any oil well for the protection of life and property and for the avoidance, prevention, and extinguishment of fires;

(N) as to the records to be kept, the manner and form thereof, and the persons by whom and the place at which the same are to be kept;

(O) as to the reports to be made, the persons to make the same, the authority or person to whom the same are to be made, the times of making the same, and the form, nature, and extent thereof;

(P) as to the tests to be made for any purpose, the nature thereof, and the times at which the same are to be made;

(Q) as to taking the closed-in pressure and open-flow capacity of gas wells and the times of taking the same;

(R) as to the time and method of shooting wells and as to the notices to be given of intention to shoot any well;

(S) restricting the production of any wells producing any gas or oil, or both, to any prescribed percentage of the open-flow capacity and prescribing the percentage of permissible extraction as to any specified gas well or the gas wells in any specified area or areas or all gas wells;

(T) prescribing the proportion or maximum amount of natural gas or oil, or both, which may be produced from any area or areas during any specified time or indefinitely;

(U) as to the inspection of oil and gas wells, both during and after drilling, and providing for the taking over of any such wells as are a menace to oil, gas, or water-bearing formations or to life or property, if upon inspection the same are found to require remedial measures to be taken, and for the execution of such measures at the cost of the owners thereof;

(V) providing for the capping of or otherwise closing in of wells for the purpose of preventing waste;

(W) generally to conserve gas and oil, or to prevent waste or improvident disposition thereof; to prevent the production and disposal of natural gas or oil in any manner likely to threaten the common reservoirs thereof with premature exhaustion, or to compel the drilling for and the marketing of gas and oil in accordance with the most approved practices; to require the cleaning out or deepening, or both, of any wells; and to control the production, transmission, distribution, sale, disposal, and consumption of all natural gas or oil produced in Alberta;

(X) prescribing the maximum price at which fuel oil produced at any well shall be sold at the well to purchasers taking delivery thereof at the well, or that such price shall be the price as fixed from time to time by the board of public utility commissioners; and prescribing the terms and conditions of sale thereof;

(Y) respecting any other matter reasonably incidental to the development and drilling of any oil or gas wells, the operation and management thereof, and any production therefrom;

(Z) requiring that no person shall commence to drill any well for the purpose of getting either oil or gas unless and until he has furnished to some person nominated for that purpose by the lieutenant governor in council a sufficient bond, either with or without sureties, in a sum not in excess of $10,000 in the case of a single well or not in excess of $50,000 in the case of a number of wells which are being drilled or to be drilled by the principal named in the bond, in favor of the person nominated as aforesaid, to the use of the Province, to secure that the drilling operations at any or all of such wells shall be conducted in accordance with the regulations for the time being in force governing such drilling operations; and that the amount of the bond, subject as aforesaid, and its form, contents, and sufficiency, shall be within the discretion of the person nominated as aforesaid.

(2) Every person who contravenes any regulation made pursuant to this act shall be guilty of an offense punishable upon summary conviction by a fine which, in the case of a corporation, shall not exceed $1,000 for a single offense, or $100 a day for a continuing offense, and in the case of a natural person, shall not exceed $100 for

a single offense, or $20 a day for a continuing offense, together with costs in every case.

(*3*) The Lieutenant Governor in Council may prescribe that the penalty for the breach of any specified regulation shall be any sum not in excess of the sums set out in subsection (*2*) of this section.

4. The Lieutenant Governor in Council may from time to time appoint advisory committees or boards consisting of competent persons, who shall hold office upon such terms and conditions as to remuneration or otherwise and perform such duties as the Lieutenant Governor may prescribe for the purpose of inquiring into any matter or thing of a technical or scientific nature in relation to any gas or oil resources, or the drilling for oil or gas, or the management and operation of any oil or gas well, or the conservation of any source of supply of gas or oil, and making recommendations with reference thereto for the guidance of the Lieutenant Governor in Council in making such regulations as will be effective and impose no greater hardship on individuals than is necessitated by the prime importance of conserving oil and gas.

5. (*1*) All regulations made pursuant to this act shall be laid upon the table of the Legislative Assembly within 15 days after the commencement of the session next held after the making of such regulations.

(*2*) All such regulations when made shall, unless and until disallowed by the Legislative Assembly at its session next held after the making of the same, have the same force and effect as if they were set out at length in this act.

6. *The Oil and Gas Wells Act*, being chapter 6 of the Statutes of Alberta, 1926, is hereby repealed.

7. This act shall come into force on the day upon which it is assented to.

ACT OF APRIL 6, 1932

R. S. A., 1932, CH. 6

An act for the conservation of the gas resources of the Turner Valley

ASSENTED TO APRIL 6, 1932

His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

1. This act may be cited as "The Turner Valley Gas Conservation Act."

2. In this act, unless the context requires a contrary meaning—

(A) "Area" means any land or lands constituted as an area by this act;

(B) "Board" means the board constituted by this act and appointed pursuant thereto;

(C) "Measure of value" means that value which is established by the board pursuant to this act in respect of all wells or producing properties in the area;

(D) "Owner," when used in connection with any well or producing property, means the person who is entitled to dispose of any gas or naphtha produced from such well or producing property, or who would be so entitled in the absence of any contract governing the disposition of such gas or naphtha upon the production thereof;

(E) "Permitted production" means the maximum amount of gas which may be produced from wells or from any specified well pursuant to any order made by the board;

(F) "Production" means the amount of natural gas, naphtha, oil, and other substances obtained or obtainable from any well;

(G) "Well" and "Gas well" means any well situated within the area which penetrates into the formation commonly known as the dolomitic limestone.

3. (*1*) All that tract of land next hereinafter more particularly described is hereby declared to be a gas conservation area, to be known as "The Turner Valley Gas Conservation Area," namely:

All of sections 27, 28, 33, and 34, in township 18, range 2, west of the fifth meridian;

All of sections 3, 4, 5, 8, 9, 16, 17, 19, 20, 21, 29, 30, 31, and 32, in township 19, range 2, west of the fifth meridian;

All of sections 25 and 36, in township 19, range 3, west of the fifth meridian;

All of sections 6, 7, and 18, in township 20, range 2, west of the fifth meridian;

All of sections 1, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 33, 34, and 35, in township 20, range 3, west of the fifth meridian;

All of sections 2, 3, and 4, in township 21, range 3, west of the fifth meridian.

(*2*) The board shall have the power to exclude from time to time from the area any of the lands last above mentioned whether there is or is not any well thereon.

4. (*1*) There shall be constituted a board, to be called "The Turner Valley Gas Conservation Board," consisting of not more than three persons who shall be appointed by the Lieutenant Governor in Council, hold office during pleasure, and receive such remuneration as may be from time to time fixed by order in council.

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(2) The board is appointed for the general purpose of effecting conservation in the area and for that purpose shall endeavor by means of negotiation to bring about the unified operation of the wells in the area by means of pooling or otherwise.

5. The board shall be a body corporate and shall have the full power and authority to perform, execute, and carry out all the duties and functions assigned to the board by this act, and for that purpose to do all and any acts and things necessary for the performance, execution, or carrying out of any such duty or function, or are incidental thereto.

6. The office of the board shall be at such place as may be from time to time approved by the Lieutenant Governor in Council.

7. The chairman of the board shall be that member thereof appointed from time to time by the board.

8. (1) All meetings of the board shall be held at the office of the board and at the call of the chairman.

(2) The chairman shall call a meeting of the board immediately upon being requested so to do in writing by the other two members of the board.

(3) Forty-eight hours' notice shall be given of all meetings of the board, unless all the members thereof are present and waive the giving of the notice hereby prescribed.

(4) The chairman and one other member of the board shall constitute a quorum at any meeting of the board.

9. The chairman shall be the executive officer of the board, and shall sign all orders or directions issued by authority of the board, and shall have the full power to act for, on behalf of, and in the name of the board in the execution, performance, and carrying out of any act, matter, or thing which is within the power of the board, subject only to such express directions or decisions as may have been given or made by a resolution of the board passed at a regularly held meeting thereof.

10.—(1) The board shall keep at its office—

(A) full and complete minutes of all business transacted at its meetings;

(B) full and complete accounts of all tests and investigations made by or by the direction of the board pursuant to this act;

(C) full and complete accounts and records of all the financial business of the board.

(2) All such minutes, accounts, and records shall be open to the inspection of any officer of the petroleum and natural gas department of the provincial government, any officer of any corporation distributing gas from the area to consumers of gas, any officer of any city, town, or village in which such gas is distributed, and any person having any interest in the nature of ownership in any well in the area, or any other person duly authorized in writing by him, at any time during ordinary office hours.

(3) All such minutes, accounts, and records shall be deemed to be of so public a nature as to be admissible in evidence on their mere production by the board or any employee thereof.

11. (1) The board is hereby empowered from time to time—

(A) to appoint such officers, servants, and employees as the board deems necessary for the transaction of its business and to prescribe their duties, conditions of employment, and remuneration;

(B) to obtain the services of such engineers, accountants, and other professional persons as the board deems necessary for the proper and convenient transaction of its business;

(C) to prescribe by regulation as to the manner in which and the time or times at which any of the business of the board shall be transacted, or any act, matter, or thing which is within the powers of the board shall be performed, executed, or carried out, either generally or in any specified case;

(D) to prescribe the nature and extent of any test or investigation to be made in respect of any well for any of the purposes of this act, and without derogating from the generality of the foregoing, may prescribe either generally or in respect of any specific test or in respect of any specified well—

(*i*) the time for closing down any well before or during the making of any test;

(*ii*) the working pressures to be used during any test or during any time or times during which a test is being made;

(*iii*) the amount of production which shall be permitted during the making of any such test.

(2) For the purpose of holding any inquiry or investigation the board and every member thereof shall have all the powers of taking evidence under oath and compelling the attendance of witnesses which may be conferred upon a commissioner appointed pursuant to *The Public Inquiries Act.*

12. (1) Every person who is the owner of any well in the area shall register with the board an address for service in the Province of Alberta.

(2) All notices and orders affecting or respecting any well in the area shall be deemed to have been served upon the person entitled thereto upon the expiration of 48 hours, exclusive of Sundays and holidays, from the time of sending such notice or order by prepaid mail to such person at the registered address for service.

(3) If there shall be no registered address for service as aforesaid, in respect of any well, all notices and orders respecting such well shall be posted up in the public office of the board and shall be kept so posted up for 48 hours, exclusive of Sundays and holidays, and

upon the expiration of the said period shall be deemed to have been duly served upon the person having the control and operation of such well.

13. Forthwith upon the appointment of the board it shall proceed to reduce the production of gas from all the wells in the area to an aggregate amount of not more than 200,000,000 cubic feet of gas per day, and to prescribe the daily rate of permitted production for each and every such well, and for that purpose may by order prescribe the periods during which any specified well or wells may be permitted to produce, and the total amount of the production which may be permitted during any such period from any such well or wells, and the working pressure at which all wells or any specified well shall be operated, and may by subsequent order and from time to time increase or reduce the amount of the permitted production of any well as the board in its uncontrolled discretion deems proper.

14. (*1*) The board shall, immediately after it has provided for the reduction in the total permitted production from all the wells in the area to 200,000,000 cubic feet per day, proceed with all reasonable expedition to cause all the wells in the area to be subjected to tests for the purpose of ascertaining the closed-in pressures and the absolute and relative productive capacity of gas and naphtha, or either of them, of each well in the area, and for that purpose may prescribe the time or times during which any specified well or wells shall be subjected to test, the nature of the test to be made, and the working pressure at which such tests are to be made either generally or in the case of any specified well, the conditions under which all or any test is to be made, and the manner in which any such test shall be carried out, the observations to be made in reference to any test, the persons by whom such observations are to be made, and the records to be kept thereof.

(*2*) The board may, during the time that any tests are being made pursuant to this section, order that the total production from all wells not under test shall be an amount not in excess of 100,000,000 cubic feet per day and that the total production from the other wells in the area under test shall be such amount as the board deems necessary for testing purposes.

15. (*1*) As soon as conveniently may be after the board has ascertained in the manner prescribed by the foregoing section hereof the productive capacity of each and every well in the area, the board shall proceed to determine the total amount of daily production which ought, in the opinion of the board and in view of the productive capacity of the area, to be permitted for the time being from all the wells in the area and from each well in the area, and the board shall, upon making such determination, make an order that as and

from a date to be mentioned in such order the permitted total daily production from all the wells in the area shall not exceed the amount of total daily production specified in such order as the permitted daily production from such well, unless and until the board otherwise orders; and the board may by subsequent order and from time to time increase or reduce the amount of the permitted production of any well, as the board in its uncontrolled discretion deems proper.

(*2*) The board shall then proceed with all reasonable expedition to determine—

(A) the probable amount of gas which may be obtainable from any reservoir or reservoirs tapped by such wells or any of them;

(B) the probable length of time during which such reservoirs will continue to produce, having regard to the extent by which the same are being drained;

(C) the immediate and prospective requirements of persons who presently are or hereafter may become consumers of gas produced in the area for domestic or industrial purposes;

(D) the extent to which gas produced in the area can be used for any useful purpose;

(E) efficient methods of effecting conservation in gas production in the area;

(F) the measured value of each well and area and any gas or oil rights in the area which the board deems to have any share value;

(G) the total daily production of all wells in the area which may be properly allowed, having regard to the obviation of waste and the coordination of the supply to the prevailing economic needs; and

(H) any other matters which are in the opinion of the board necessarily incidental or collateral to the foregoing subjects for examination and report.

16. The board shall, as soon as conveniently may be, and in any event within six months after its appointment, proceed to determine the measure of value of each well in respect of its naphtha production and gas production, and such measures of value shall be determined by such tests and calculations as the board may in its uncontrolled discretion deem proper, having regard to the spacing of wells, the undrilled acreage held in connection with the well, and any other circumstance.

17. In case two or more wells belonging to and operated by the same person, or in the case of two or more wells belonging to different owners and operated as a unit or under any pooling agreement, the owners or operators thereof may, with the written consent of the board and subject to any directions given by the board, but not otherwise, obtain the amount of the production permitted in respect

of all such wells from any one or more of such wells upon making a corresponding reduction in the production from the other wells.

18. As soon as reasonably possible, and in any event not later than the 1st day of October, 1932, the board shall proceed to hold a public inquiry for the purpose of—

(A) determining any further readjustment of the aggregate permitted production of all wells in the area which the board deems expedient and proper, having regard to the knowledge then available as to the content of any reservoir or reservoirs in the area and to the requirements of residents of the Province for supplies of gas and naphtha;

(B) ascertaining—

(*i*) The net detriment, if any, suffered by any person in respect of any well in the area arising out of anything done pursuant to this act, having regard to any circumstances which the board deems material or relevant, and without in any way derogating from the generality of the foregoing, by reason of any loss of production of gas and naphtha, or either of them; any loss caused by deferment of revenue; and any depreciation in the present value of the prospective production of the well due to the extension of the period for obtaining and marketing such production;

(*ii*) The benefit, if any, and the extent and value thereof arising out of anything done pursuant to this act and resulting to consumers of gas for industrial purposes; consumers of gas for domestic purposes; persons engaged in the business of gathering and scrubbing gas; and persons engaged in the business of distributing gas to the consumers thereof;

(*iii*) The benefit, if any, arising out of anything done in pursuance of this act resulting to any well or producing property;

(*iv*) The persons by whom and to whom any sum ought to be paid which the board considers should be paid on account of any detrimental consequences or any beneficial consequences.

19. The board shall use such endeavors as it deems proper for the purpose of bringing about the unified operation of all the wells in the area by means of voluntary pooling, upon a fair and equitable basis, and if on the 1st day of October, 1932, or at any earlier date the board considers that there is no reasonable prospect of unified operation being accomplished by voluntary pooling, or that the basis of any established or proposed scheme of pooling is not fair or equitable, the board shall then report to the Lieutenant Governor in Council and shall draw up and submit therewith a recommendation as to any scheme of unified operation of all the wells in the area which appears to the board to be necessary to ensure proper conservation of the production of the area, the protection of the interests of producers and consumers of gas and of persons engaged in gathering, processing, and distributing gas; and shall further report as to whether or not any compensation should be payable in respect of all the wells in the area on account of any detrimental consequences to such wells resulting from any measures of conservation, the amount which should be payable in respect of the beneficial consequences, if any, in respect of such wells resulting from any measures of conservation, the amount, if any, which should be payable in respect of any beneficial consequences resulting to any person engaged in the gathering, processing, and distributing of gas and any consumers thereof or any class of such consumers, and shall further report as to the nature of any financial or other relationships which ought to be established between any producer or producers or association of producers and any other producer, producers, or association of producers for the purpose of ensuring a fair and equitable return in respect of each well, producing property, and proven acreage in the area out of the revenues of all the wells in the area.

20. (*1*) The board is hereby empowered to raise by means of a rate levied on all the gas, naphtha, and other products of all wells in the area such sums as may be necessary to defray the costs, charges, and expenses of the board, in the absence of any other provision being made for their defrayal.

(*2*) The board shall, unless other provision has been made for the defrayal of its expenditures within 30 days of the date of its appointment, and thereafter in the months of January, April, July, and October in each year, make an estimate of its probable expenditures for a quarter of a year for which such estimate is made and of the probable amount of gas, naphtha, and other products produced by wells in the area which will be sold, and to proceed to make a levy at a definite amount of money upon each thousand cubic feet of gas sold during such quarter and at a definite amount of money upon each gallon of naphtha or other product from such wells sold during such quarter, and in fixing amounts to be levied respectively on gas, naphtha, or other products the board shall have an absolute and uncontrolled discretion.

21. (*1*) As soon as the board has determined the amount of the levy or levies to be made for the current quarter it shall proceed to make a demand in writing for the payment thereof upon the persons having the control and operation of each well in the area.

(*2*) The amount so demanded shall be payable in respect of all gas, naphtha, and other products upon which it is levied which are sold from and after the day upon which the board is appointed.

22. (*1*) All sums of money payable on account of any rate made pursuant to this act in respect of any gas or naphtha shall be paid to the board or to such persons as the board shall direct on or before the fifteenth day of the month following the month in which any

such gas or naphtha is either delivered to a public utility or sold to any other person.

(2) The sum payable in respect of gas sold to a public utility shall be paid by the public utility; and the sum payable in respect of gas or naphtha sold to any person other than a public utility shall be paid by the purchaser to the vendor, who shall remit the same to the board or such person or persons as the board may direct.

23. Every order made by the board pursuant to any of the provisions of this act shall, upon being served, have the same force and effect as if such order had been an integral part of and had been enacted by this act.

24. In case default is made in complying with any order or direction made or given by the board in respect of any well, the board may give notice of such default to any person or persons from whom any money is due or accruing due in respect of the purchase price of any gas or other product from such well, and requiring such last-mentioned persons to pay to the board all sums then owing or which may thereafter become owing for the purchase price of any such gas or other product until such time as the default is remedied, and thereupon such persons shall pay to the board all such sums as and when the same may become due; and any payment so made to the board shall be deemed to be in full satisfaction of all claims of the persons having the control and operation of such well; and all sums so received by the board shall be retained by the board until the default in respect of which the notice was given shall have been remedied.

25. Any person who makes any default in complying with any order of the board as to the operation of any well in the area shall be guilty of an offense and shall be liable on summary conviction therefor to a penalty of not more than $500 and costs, and in the case of a continuing default to an additional penalty of $100 for each day after the first day during which such default continues.

26. This act shall come into force on the day upon which it is assented to.

NOTE.—This statute was sustained and an injunction against orders of the board refused in *Spooner Oils, Ltd.*, v. *Turner Valley Gas Conservation Board*, 2 W. W. R. 454 (1932), and, pending appeal, a restraining order was denied by a justice of the Provincial Court of Appeals, 2 W. W. R. 641 (1932).

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